

U. S. Circuit Court, Eastern District of
Brooklyn

Victor Talking Machine Co.	)	No. 5 - 94
versus	)	In Equity
Warrant V. P. Bradley	)	Unfair competition

PARTIAL RECORD, 1909

U. S. Circuit Court. Eastern District of New York

Victor Talking Machine Company, a corporation	)	No. 5-94
organized and existing under the laws of the	)	In Equity
State of New Jersey, Complainant	)	Unfair
	)	competition
versus	)	in copying
	)	sound-
Winant V. P. Bradley, a citizen, resident and	)	recordings.
inhabitant of the Eastern District of New)	
York, Defendant)	

PARTIAL RECORD, 1909.

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CIRCUIT COURT OF THE UNITED STATES.
Eastern District of New York.
In Equity No.

Victor Talking Machine Company etc.,
Complainant,
vs.
Winant V. P. Bradley, etc.,
Defendant.

PLEADINGS.

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At a Stated Term of the Circuit Court of the United States for the Eastern District of New York, held in the Court room thereof in the Post Office Building, in the Borough of Brooklyn, City of New York, this 16th day of February, 1909.-

PRESENT:

HON. THOMAS I. CHATFIELD,

United States Judge.

Holding the Court.

Victor Talking Machine Company, a corporation
organized and existing under the laws of the State of New
Jersey,

Complainant,

vs.

Winant V. P. Bradley, a citizen, resident and in-
habitant of the Eastern District of New York,

Defendant.

ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNC-
TION SHOULD NOT ISSUE.

And now, to wit, this 16th day of February 1909,
the complainant having filed its Bill of Complaint, and upon
reading the Bill of Complaint and the affidavits of P. D. Fer-
mandy; C. Scotti; E. de Gorgoa; C. H. H. Booth;
A. O. Pettit; J. W. Owen; A. C. Muddleton; V. W. Moody;
S. J. Williams; A. T. Doty; C. C. Beekman; J. J.
Cavanaugh; E. J. Evans, and W. S. Moffatt
submitted in support of said bill, together with the exhibits,
annexed to and accompanying said Bill of Complaint and affida-

vit, and upon the motion of complainant's counsel it is this day,-

the defendant show cause why
ORDERED, that a preliminary injunction, in conformity with the prayer of said bill of complaint, *shall not* issue out of and under the seal of this Court, on Saturday the 20th day of February A. D. 1909, ~~unless the defendant shall show cause~~ before me, on Saturday the 20th day of February A. D. 1909, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, in the Court room of the United States Circuit Court for the Eastern District of New York, in the Post Office Building, in the Borough of Brooklyn, in the City and State of New York, *that is* why said preliminary injunction should not be issued against the defendant in the above entitled cause, as prayed in said Bill of Complaint, and it is further

ORDERED that copies of the Bill of Complaint and the affidavits filed in support of this Order to show cause, be served upon the defendant, or his Counsel, Waldo G. Morse, Esq., of 10 Wall Street, in the Borough of Manhattan, City of New York, *service* ~~and~~ *before Feb. 17th shall be*

sufficient.

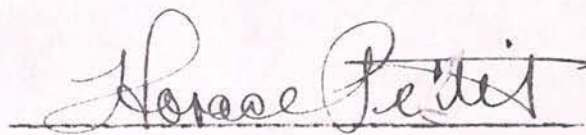
Thomas J. Thayer
United States Judge.

To Winant V. P. Bradley, Esq.,
No. 3518 Avenue I,
Borough of Brooklyn,
City and State of New York, or his Counsel,

Waldo G. Morse, Esq.,
10 Wall St., Borough of Manhattan,
City and State of New York,

You are hereby notified that the exhibits referred to in the Bill of Complaint, filed herein, and in the affidavits filed in support thereof, have been filed and may be inspected in the office of the Clerk of the United States Circuit Court

for the Eastern District of New York, in the Post Office
Building, in the Borough of Brooklyn, City and State of
New York.

A handwritten signature in cursive script, reading "Horace Pettit", written over a horizontal line.

Counsel for Complainant.

February 16, 1909.

CIRCUIT COURT OF THE UNITED STATES.

Eastern District of New York.

In Equity No. 574

Victor Talking Machine Company, a corporation
organized and existing under the laws of the State of New
Jersey,

Complainant,

vs.

Winant V. P. Bradley, a citizen, resident and in-
habitant of the Eastern District of New York,

Defendant.

BILL OF COMPLAINT.

To the Honorable, the Judges of the Circuit Court of
the United States, for the Eastern District of New York, in
Chancery sitting:-

The Victor Talking Machine Company, a corporation
organized and existing under the laws of the State of New
Jersey, and having its principal place of business in the City
of Camden, said State of New Jersey, brings this, its Bill of
Complaint, against Winant V. P. Bradley, a citizen, resident
and inhabitant of the said Eastern District of New York,
residing at No. 3518 Avenue I in the Borough of Brooklyn, in
the City and State of New York, within said Eastern District
of New York, who is holding himself out as "Sales Agent" for a
"Continental Record Company", and thereupon your orator com-
plains and says:-

1. That your orator controls, and is the sole and

exclusive licensee, under and by virtue of certain agreements and licenses, of certain existing Letters Patent of the United States heretofore granted to Emile Berliner, of Washington, D. C., for Improvements relating to talking machines and talking machine records, and is also the owner of certain Letters Patent of the United States granted to Eldridge R. Johnson, now of the Township of Merion, State of Pennsylvania, relating to Improvements in Talking Machines, Talking Machine Records, and Accessories, and is also the owner of certain trade-marks, good-will, and business, relating to the manufacture and sale of talking machines, talking machine records, and accessories.

2. That the said patented talking machines, records and accessories, belonging to your orator, have come into and are in large and extensive commercial use, and have achieved for your orator a wide and favorable reputation for a number of years past since the date of the said inventions of the same, and since about the year 1895, and that your orator, and its predecessors in title, being and having been, the exclusive owners and licensees of and under the said patented inventions for many years past, have extensively manufactured and sold the said talking machines, records, and accessories, and have acquired therefor a wide and exclusive trade in the said goods, (except for the infringement herein referred to and a few other infringements, to enjoin which suits were filed) and the said goods have for about twelve years last past been well and favorably known to the trade and public generally throughout the United States as the goods of your orator, and its predecessors, from whom it acquired title.

3. Your orator further shows that its said records made for, and used commercially, in connection with its said talking machines, and extensively placed upon the market during the period above mentioned, have been, and are, flat disc shaped records constructed of a hard, durable and practicably indestructible material, having the desired quality, upon which the sound record to be reproduced is impressed, That since the date when the said records went largely into commercial use, about the year 1895 or 1896, and up to and until the present time, your orator and its predecessors in title, have manufactured, advertised and sold the said flat disc records as above set forth, a portion of said records being about seven inches in diameter, a portion being about ten inches in diameter, and some of said records being about twelve inches in diameter, and usually about one-sixteenth of an inch thick, the record material being of a dark color, usually black, upon which the record groove is impressed or stamped from a point near the periphery to a point about one and a half inches or two inches from the center of the record tablet in closely disposed spiral lines leaving a smooth, centrally disposed disc, upon which lettering and marking is applied for designating the title of the record, together with the name of the manufacturer or patentee, and exhibition of the trade-mark or trade symbol by which the record was designated.

4. Your orator and its predecessors in business have adopted and employed various trade-marks and trade-names by which to designate its different kinds of records, and which have become well known and acquiesced in by the public and

trade generally, among which is the picture of a dog listening to a talking machine, and entitled "His Master's Voice." Another of which is the word "Victor", another of which is the word "Victrola", and another the word "Monarch", and various other trade-marks and trade-names which are some-times used singly, or in connection with each other as the case may be.

5. Your orator further shows that Eldridge R. Johnson of the City of Philadelphia, State of Pennsylvania, commencing about the year 1896, manufactured for the Berliner Gramophone Company, one of your orator's predecessors in title, and the then exclusive licensee under the Berliner patents during all the period of time it was manufacturing and selling the said goods, all the talking machines sold by the said Berliner Gramophone Company, under the said Berliner patents, and that the said Johnson invented, during that period of time and thereafter, many valuable improvements relating to the said talking machines and records, and received therefor numerous Letters Patent of the said United States, and of foreign countries; and that the said Johnson very materially developed and improved the said machines and records which were placed upon the market commercially, and made great improvements in said records by which the sounds reproduced by them were rendered much clearer, louder, and more natural than any heretofore produced.

6. That up to the time of the incorporation of your

orator, the Victor Talking Machine Company, on October 5, 1901, the said Johnson continued to, and did, improve upon the said talking machines and records, and after the incorporation of the said Victor Talking Machine Company, your orator, the said Johnson, who is now President of said Company, still continued to improve upon the said talking machines and records, and to perfect the process of recording the sound and the manufacture of the records to reproduce the recorded sounds in a clearer and more natural manner.

7. Your orator, and its predecessors in title, have spent hundreds of thousands of dollars in producing the different sound records in employing talent of different kinds, such as comedians, singers, bands, and elocutionists, for recording the different pieces and selections which are reproduced by these records, and has also spent many hundreds of thousands of dollars in advertising the same, and has been to great expense to obtain for the public a varied lot of selections of these different kinds and in advertising the same, and have further been to great trouble and expense in obtaining novel and attractive features for the selections to be recorded upon the sound records so sold.

8. Your orator further shows, that in the talking machine business, disc sound records are made by having the performer, either vocalist, or instrumentalist, or orchestra, or band, as the case may be, sing, recite, or play into a suitable recording instrument which produces an "original" sound record so called or "original"; and that thereafter electroplate reverses, or matrices are obtained from said

original sound records from which in turn are obtained a multiplicity of commercial sound records sometimes known as "duplicates" in order to distinguish the same from originals aforesaid.

9. Your orator further shows, that it has acquired for large and valuable considerations the right to the exclusive services of various musical artists, domestic and foreign, including singers, instrumentalists, orchestras and bands of great, and in many instances, of international renown, a large number of said artists being known as "Grand Opera Singers", and who rank among the greatest artists of the world. These said artists, by contracts, have respectively agreed to make talking machine sound records exclusively for your orator, the Victor Talking Machine Company, and during the existence of said contracts, to sing for and make records for no other talking machine concern, or person whatsoever, and in return for such exclusive rights, the said Victor Talking Machine Company is under contract to pay to the said artists, as a consideration for the exclusive nature of the rights above mentioned, large sums of money, not only as a consideration for the making of the different records, but in addition thereto, your orator, the Victor Talking Machine Company, is under contract to pay large sums of money as royalties. Said royalties being based upon the commercial disc sound records, or duplicates, manufactured by your orator.

And your orator further shows that the said various musical artists aforesaid, are very numerous and practically inaccessible at this time, and wherefore your orators say that said artists are not necessary parties to this suit, inasmuch as their rights are not different and of distinct nature, and

will be safe guarded under their respective agreements with your orator.

And your orator further shows that the services and qualifications of the said artists, on account of their great natural gifts, special training, long experience, and great renown, are special, unique, extraordinary, personal and unreplaceable, and the position of your orator of exclusive rights under the contracts before referred to, constitutes an asset of exceedingly great value.

And your orator further shows that the quality, value and reputation of a sound record are due, not only to the musical character and popularity of the particular selection, and not only to the musical ability and renown of the famous artists who sign or perform such selection in making the original sound record, but also to the skill, experience, methods and processes employed in the laboratory in making or taking such original recordings, and to the skill, experience and methods and apparatus subsequently employed in obtaining therefrom the original shells, or matrices, and likewise, to the construction and adaptation of the talking machine used in the laboratory for such original recordings, many valuable details and improvements in which have been developed by your orator and its predecessors in business during their long experience and at great expense, and by the skill of those employed in making such original recordings; and further, to the knowledge, skill and experience of the high priced experts who supervise, or direct, the making, or taking of the original recordings by such artists; and that such services by said experts are unique, special, extraordinary, personal and unreplaceable; and that such processes, methods, apparatus and machines, contain many features in the nature of trade secrets

And your orator further shows that, among the artists of great and international renown with whom the Victor Company have and has had an exclusive contract by which said artists agree to make original recordings exclusively for said Victor Talking Machine Company, are such artists as Mmes. Bessie Abbott, Emma 'Calve', Emma Eames, Geraldine Farrar, Johanna Gadski, Louise Homer, Nellie Malba, Adeline Patti, Ernestine Schumann-Heink, Marcella Sembrich, Luisa Tetrazzini, and Signors Carlo Albani, Mario Ancona, Mattia Battistini, Guiseppe Campanari, Enrico Caruso, Charles Dalmores, Emilio de Gogorza, Marcel Journet, Pol Plancon, Antonio Scotti, Herbert Wither-
spoon, H. Evan Williams, and many others.

10. And your orator further shows that the said exclusive contracts between your orator, the Victor Talking Machine Company, and various artists above referred to, and are still subsisting to the great benefit of all the parties thereto; your orator has already expended vast sums of money and great efforts in the building up and carrying on of the business provided for by said contracts; that the artists referred to have been paid large sums of money not only as a consideration for making the original sound recordings, but in addition thereto, have been paid large sums of money as royalties, as aforesaid; that the said sound records produced under said contracts have become widely and most favorably known throughout this country, and abroad as the records of your orator, and enjoy the very highest reputation for the superior quality, not only as regards the musical character of the recorded sounds, but as to durability and lasting qualities, and your orator has expended, in this

and foreign countries, vast sums of money in making and placing on the market, and in advertising said Victor records, and have sold large numbers thereof in this and other countries, and has built up in this and other countries, and is still carrying on a large and exceedingly valuable and profitable business in making, and advertising, and selling, the said Victor records, under said exclusive rights. And your orator further shows that the value of the exclusive rights aforesaid in this and other countries, and of the business in this country built up and now maintained and existing under the same is very great.

11. Your orator further shows that the value of the subject-matter in controversy in this cause, exceeds Two Thousand Dollars (\$2000.00) over and beyond interests and costs; that this suit is between citizens of different states, the complainant being a citizen, resident and inhabitant of the State of New Jersey, and the defendant being a citizen and resident of the State of New York.

12. Your orator further shows that to add another distinguishing characteristic to these high class sound records so recorded by the great artists referred to, that about the month of July, 1902, your orator adopted a particular marking and method of dressing the said sound records, consisting of a red circular label, or disc and applied to the center of the dark record discs and within the centrally depressed portion of the record enclosed within the inner marginal line of the record grooves. This circular label or disc being of a bright red color, and being in marked contrast to the disc itself,

and making a distinct mark for said disc, and prior to the adoption and use of the said trade-mark and marking, as above, namely, the use of the bright red label in the center of a record disc of contrasting color, in this country, said trade-mark or marking had never been used commercially in connection with the manufacture, sale or use of talking machines, records, or other accessories, by any party or concern, and that the said trade-mark or marking aforesaid, has always, since its adoption, by the said Victor Talking Machine Company, been universally recognized in this country as the exclusive property of your orator, and all the goods to which the said trade-mark has been applied, have been known by the trade and public generally as your orator's goods, and that the public generally, have acquiesced in the exclusive rights of your orator in the premises, and that the said rights have never been disputed except by this defendant (and another who was speedily enjoined by legal process) as your orator is informed and believes.

13. That your orator adopted the trade mark and marking aforesaid, consisting of a bright red label or disc in the center of a sound record of contrasting color, to give a distinctive and prominent trade mark and distinction to the said class of sound records upon which were impressed the recorded sounds of the most famous singers and artists, and the highest class of recorded selections, using this distinctive and arbitrary trade mark, dressing and marking for the purpose of establishing a class different from the ordinary records to which the other different trade marks have been applied, and which class would be known as the Red Seal or Red Label record, and which designation would identify them from all the other

records that were ever placed upon the market by your orator.

14. Your orator further shows that in order to protect itself, it registered the said trade-mark consisting of a red circular label or disc applied to the center of a disc of contrasting color as a trade-mark for talking machine records, talking machines and accessories, in the United States Patent Office at Washington, D. C., on July 5, 1904, the certificate being numbered 42,962, a copy of which is ready in court to be produced.

15. And your orator further shows unto your Honors that subsequent to and by reason of the adoption of this trade mark, and marking, and dressing for this class of records, the same have become universally recognized as the sound records made and sold by your orator by the trade and public generally, and have also become universally recognized in this country by the trade and public generally as a record of the class aforesaid, namely, a record containing a selection of a different class from any other record made and sold by your orator, and as the product of the highest skill and greatest expense in the selection and employment of talent, and a record made with care and great expense, this being done for the purpose of making these records preeminently fine, and that the same, by reason of their great excellence, and marked superiority, acquired under their designation of Red^{Seal}/or Red Label record so marked and dressed as aforesaid, a most enviable reputation, and became known throughout the trade and by the public by the red label or disc applied to the centre thereof as a record of great excellence and superiority, and a great public demand and a wide and extensive market was created

therefor, which demand your orator is ready and able to supply; and that, but for the wrongs hereinafter complained of, your orator would continue to enjoy large gains and profits by reason of the great business and good will built up by it under and by virtue of the exclusive nature of the said rights and by reason of the special, unique, original, personal and unreplaceable nature of the services rendered by the artists and by the expert record makers and by reason of the special and excellent nature of the processes, methods, apparatus and machines aforesaid, employed in making said records and by reason of the vast sums of money expended in the premises by your orator. The said red disc or label is so applied upon the central portion of the record tablet that it is a little below the plane or surface of the record tablet and contains the lettering denoting its source of manufacture, the selection contained in said tablet, and sometimes other of the said trade marks of your orator, the Victor Talking Machine Company, uses upon its records and talking machines. Specimens of said records so made by said famous artists and containing said red label are ready in court to be produced and will be produced at the hearing of this cause.

16. And now your orator is advised and believes, and therefore avers, that the defendant WINANT V. P. BRADLEY, and others conspiring and confederating with him, whose names are at this time unknown to your orator (but whom, when discovered, your orator asks leave to implead as parties defendant herein), well knowing the premises and the exclusive rights of your orator, are preparing and threatening to injure and

destroy your orator's exclusive rights in the premises, and to divert to themselves the large gains and profits to which your orator is justly entitled and would otherwise received but for the threatened wrongs of said defendant and his associates, - by placing on the market in this country counterfeits or spurious imitations copied from said sound-records made (by the processes, methods and apparatuses aforesaid) for your orator by the musical artists and expert record makers aforesaid (under the exclusive rights aforesaid), and offering the same for sale at prices greatly below the prices now being willingly paid by the public and received by your orator, the Victor Talking Machine Company, for its genuine records aforesaid. In order to obtain such counterfeits, it is not necessary to employ the services of the famous artists or of the high-priced experts referred to, or the valuable processes, methods and apparatus referred to; but, instead thereof, such counterfeits can be obtained by merely electroplating at a trifling cost a commercial disc sound-record, and then using such electroplate (or further electroplates or stamping-matrices obtained therefrom in the same manner) for stamping out counterfeit records by the thousand, which latter will be practically indistinguishable from the genuine records of your orator; and your orator is advised and believes, and therefore avers, that the foregoing is the method by which said defendant is threatening and preparing to produce his so-called "Continental Grand Opera Disc Records". And unless the said defendant and his associates be enjoined from so doing, the placing on the market of such counterfeit or imitation sound-

records will deprive your orator of its legitimate gains and profits.

17. And as an instance of the wrongs aforesaid and of the threats and preparations to injure and destroy your orator's business, your orator has been informed and believes, and therefore avers, that the defendant WINANT B. P. BRADLEY is distributing catalogues and circulars addressed to the talking-machine trade and relating to his so-called "Continental Grand Opera Disk Records"; which are alleged in said circulars to be "made in this country from Mother records imported from foreign countries", and soliciting orders from the trade for said so-called "Continental Grand Opera Disk Records." The catalogue referred to in said circulars is a printed folder reciting that:--"Following is a forecast of a Catalogue, now in press, of a list of ten inch disk records", and that "These records are all duplicates from original records made by the artists whose names are used" in said catalogue, and that they "are equal to the originals in all respects." Among the artists named in the said Catalogue are the following artists who are under exclusive contract with your orator, the Victor Talking Machine Company, namely, Mmes. Bessie Abott, Johanna Galski, Louise Homer, Marie Michailowa and Schumann-Heink, and Signors Enrico Caruso, Guiseppe Campanari, De Gogorza, Marcel Journet, Pol Placon, Antonio Scotti and Evan Williams.

The defendant's aforesaid circular offers the records of the foregoing artists "at prices averaging not more than one-half those charged for the original records" and further states that they are "equal to the original" and the defendant further states in said circular that experts who have listened to his samples "are unable to determine between the original and the copy."

18. And your orator further shows that if the defendant's spurious Grand Opera disc records are in fact made from the so-called "Mother records" (as alleged by said defendant) and are in fact all duplicates from original records made by the artists whose names are above set forth (as alleged by said defendant), then such counterfeit records are indeed practically indistinguishable from the genuine records of your orator (as likewise implied by the defendant's said circular and catalogue). And defendant's offer to sell the same at a price about one-half of your orator's list price will cause the purchasing public in this country to refrain from buying the genuine records from your orator, the Victor Talking Machine Company, to the great injury of your orator; and will induce the public to purchase from the said defendant to his enormous profit; and the mere advertising and offer to sell such counterfeits (even without the actual placing on the market of the counterfeit Grand Opera Records therein set forth), will greatly and irreparably injure the reputation, good-will, and business which your orator has built up and is now maintaining under the exclusive rights aforesaid.

19. Whether or not any of the "Mother records" referred to in the said circular of said defendant have been imported from foreign countries (as alleged by said defendant) or have been made in this country, is unknown to your orator; and

whether or not the said defendant has either made or placed on the market or sold any of the spurious sound-records above referred to, namely, those alleged to be duplicates of foreign "Mothers", is likewise unknown at this time to your orator. Wherefore, your orator prays leave to set forth the true facts in this regard, if the same should become known to it and should be deemed material, but your orator is informed and believes and therefore avers that a large number of the records referred to in said circular and catalogue are duplicates and counterfeits of certain records, which have been made by your orator in the United States of America, the selections of which were sung or performed by the aforesaid artists of great renown whose names are given in said catalogue, and which artists, as aforesaid are under contract to sing or perform exclusively for your orator as hereinbefore set forth, and are not duplicates of any "Mother" records which the said circular alleges were made in foreign countries.

20. And your orator further shows that the acts and preparation of this defendant will, unless enjoined by this Honorable Court, encourage others to venture to infringe your orator's said exclusive rights in an attempt to divert to itself a portion of the profits which should and otherwise would flow to your orator, to the great and irreparable damage and possible destruction of the good-will and business built up and maintained by your orator in the premises.

21. Yours orator annexes hereto a specimen of defendant's

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said circular and said catalogue, as complainant's Exhibit A and B respectively; and your orator will present in court specimens of the catalogue and other advertising matter of your orator's said pre-eminently fine and high class red seal records, heretofore referred to.

22. And your orator further shows unto your Honors, that the said disc sound records are intended for use and are capable of use only in connection with reproducing apparatus, constructed in accordance with United States Letters Patent to Emile Berliner, No. 534,543, dated February 19, 1895, and that your orator has an exclusive license and controls the said patent No. 534,543, and that, as aforesaid, said flat disc sound records made by the complainant and defendant herein are intended solely for use in connection with such reproducing apparatus, are incapable of use in connection with any other form of reproducing apparatus and are never so used, and your orator further shows that there is no other commercial reproducing apparatus in commercial use with which said records can be used and that the label on the bottom of defendant's spurious and counterfeited records which contains the statement that "this record is manufactured and sold for use on mechanical feed machines only," is incorrect and misleading, as there are no commercial mechanical feed machines with which the said records can be used, so that when said spurious and counterfeited records are sold by the defendant they are sold for use upon the said patented reproducing apparatus of patent #534543, and to be used for reproducing sound in accordance with the method of said patent No. 534,543.

23. And your orator further shows unto your Honors that on or about December 31, 1903, your orator, the said Victor Talking Machine Company, at its laboratory in the Borough of Manhattan, City and State of New York, did record a selection entitled "Pagliacci--Prologo"; that said selection was sung by Antonio Scotti, who was then and has been ever since, a baritone of the Metropolitan Opera Company, of the City of New York, and that the said Antonio Scotti was at that time and has been ever since, under contract with your orator, the Victor Talking Machine Company, to sing selections to be recorded by the Victor Talking Machine Company only, and for no other person, firm or corporation for the purpose of having his voice recorded on talking machine records; your orator further showing that for the privilege of having the exclusive talent of said artists for the purpose of making said talking machine records ^{to} paid and has paid, ever since, large sums of money to the said Antonio Scotti and to others who are so under exclusive contract, and that from the original records so recorded in the laboratory of your orator, of the said selection by Antonio Scotti, a large number of commercial duplicates have been made and sold, to the great gain and profit of your orator, upon all of which your orator has placed its said well known Red Label trade mark to distinguish it as one of said high class records hereinbefore mentioned, and is still so selling the duplicates of said record, one of which is ready in court to be produced, marked "Complainant's Exhibit, Complainant's Scotti Record" which record is listed in the catalogue of records of your orator as number 81,021.

24. And now your orator is advised and believes and therefore avers that the said defendant, Winant V. P. Bradley, and others conspiring and confederating with him, whose names are at this time unknown to your orator (but who, when discovered, your orator asks leave to implead as party-defendants herein), well knowing the premises and of the exclusive rights of your orator, especially as to the said record No. 81,021, aforesaid, have conspired and confederated together to counterfeit and duplicate the said record without leave of your orator, and also to use the name of Antonio Scotti on the said records so duplicated and counterfeited from this original record, so recorded by your orator as aforesaid, and are preparing and threatening to injure and destroy your orator's exclusive rights to the selection so recorded by Antonio Scotti exclusively for your orator, and to secure to themselves the large gains and profits to which your orator is justly entitled and would otherwise receive, but for the committed wrongs and the threatened wrongs of the said defendant and his associates, by placing on the market in this country, a counterfeit or spurious imitation copied from the said record No. 81,021, which was made exclusively for your orator by Antonio Scotti, as aforesaid, and selling and offering the same for sale at prices greatly below the price at which the original and genuine record is sold by your orator, namely, at Two Dollars apiece, whereas the said Bradley offers for sale and sells the said counterfeits at Sixty Cents apiece; and your orator is advised and believes, and therefore avers that the said Winant V. P. Bradley, the defendant, and others conspiring and con-

federating with him, obtained one of these genuine Victor Talking Machine Company's records No. 81,021, and by electroplating or otherwise at a trifling cost, obtaining stamping matrices therefrom and used said stamping matrices so counterfeited from one of complainant's original genuine records, for making counterfeit duplicates, one of which of said counterfeited records of complainant's record No. 81,021, being ready in court to be produced, and is marked "Complainant's Exhibit, Defendant's Counterfeit Record."

25. And your orator is further advised and believes and therefore avers that the said defendant, Winant V. P. Bradley, and the said others who are conspiring and confederating with him, are counterfeiting and are preparing to counterfeit other records made by artists under exclusive contract with your orator, the Victor Talking Machine Company, and advertises by circulars and catalogues that it will sell such counterfeit records of other selections made exclusively for the Victor Talking Machine Company, by other artists, of great and international renown, such as, Mmes. Bessie Abbott, Johanna Gadski, Louise Homer; Ernestine Schumann-Heink, and Signors Guiseppe Campanari, Enrico Caruso, Emilio de Gogorza, Marcel Journet, Pol Plancon, Antonio Scotti, and H. Evan Williams, advertising them for sale at prices sometimes less than one-half of that at which the genuine records made by your orator are sold, and is also threatening to turn out an additional number of one hundred to one hundred and fifty of these counterfeit records, that is to say, one hundred to one hundred and fifty additional different selections so counterfeited by the said defendant, and the others who are conspiring and con-

federating with him. All of which will irreparably damage and destroy your orator's exclusive rights in the premises, will cost your orator large and irreparable damage and loss, and will divert to the said defendant, such large gains and profits to which your orator is justly entitled, and would otherwise receive, but for the unlawful acts and damages already committed by the defendant, and those conspiring and confederating with him, which damages and loss and irreparable injury will be increased further by the threatened wrongs of the said defendant, and his associates; your orator further shows unto your Honors that the extensive circularizing of the trade, which the defendant is now engaged in, that is to say, advertising these counterfeit records, will, in addition to the damages and losses which have been and will be occasioned to your orator by the sale of these counterfeit records, also demoralize the trade and cause a loss and damage and irreparable injury independent of the damage, loss and irreparable injury caused by the sales of these counterfeit records.

26. And your orator further shows unto your Honors that the acts and doings of the said defendant Winant V. P. Bradley, in so counterfeiting and selling the sound records aforesaid, that is to say, those selections which have been recorded by artists and others under contract with the Victor Talking Machine Company, to make records exclusively for this complainant, are not only fraudulent but are in unfair competition with your orator's rights in the premises.

27. And your orator further shows that the defendant not only unlawfully counterfeits and duplicates the records of your orator, to which your orator has been put to great expense

and trouble to produce, but that the said defendant applies to the record so produced, a label having an outer circular red portion, of a shape similar to the red seal or red circular disk of the complainant's said well-known records, in imitation of the complainant's well known red seal or disc which is impressed upon the complainant's record in imitation and simulation of your orator's red seal or red circular disc as aforesaid, and offer the said counterfeit records so labeled in imitation of your orator's discs to the public in imitation thereof, as hereinbefore set forth, and have offered and sold the same and still threaten to continue to offer the same so pressed and marked in imitation and simulation with your orator's red seal label, to the great harm and damage and irreparable injury of your orator's rights and for the purpose of deceiving the public; and your orator is further informed and believes, and therefore avers that, except for these counterfeit records, so unlawfully made and sold by the defendant, no other talking machine record on the market, except that of your orator, has thereon, a label so made in imitation of your orator's disc, that is to say, with a red circular label.

28. And your orator further shows that the said defendant and those conspiring and confederating with him have manufactured and sold the said counterfeit flat disc records, in imitation of your orator's well-known goods in large numbers, and has a large stock of the same on hand ready to be shipped throughout the country, and has made arrangements with dealers in various large cities for the handling of said counterfeit sound records, which manufacture and sale, unless restrained by decree of this Honorable Court, through the intervention of a temporary injunction, pending final hearing,

will irreparably damage and injure your orator.

29. And your orator further shows that the said defendant, Winant V. P. Bradley, and those conspiring and confederating with him, have received and enjoyed and are now receiving and enjoying great gains and profits and advantages from the said unlawful sale and use of the said sound records, made, marked, and dressed in counterfeit and in imitation of your orator's said genuine sound records, and from the said unlawful use and sale of said sound records, which are duplicated from, and are facsimiles and counterfeits of your orator's genuine goods, which might, and otherwise would have been obtained by your orator, and to which your orator is justly entitled, and how much exactly, your orator does not know, and prays discovery thereof.

30. And your orator further shows that the defendants herein, by reason of making inferior and imperfect records, not only harm and injure the high reputation which complainant has made for all of the records manufactured and sold by it, but that by reason of counterfeiting and duplicating the complainant's records, whereby the defendant is not put to the cost and expense of employing talent and recording selections, and by employing poor materials and workmanship, the said defendants produce the said imperfect and inferior and cheap record, and furthermore, the said defendants are selling said records at cheap and cut prices, and thereby injure your orator's trade and business, and by reason of the infringement complained of the public and trade are led to believe that these cheap and inferior records are the records manufactured and sold by your orator as aforesaid.

Forasmuch, therefore, as your orator can have no adequate relief, except from this Honorable Court and as the said acts and doings and proceedings of the defendant are contrary to equity, to the end, that the defendant may show, if they can, why your orator should not have the relief hereby prayed, and may to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make, but not under oath,--the oath to the answer being specially waived,--to all and singular the premises, matters and things hereinbefore stated and charged, as fully and particularly as if severally and separately interrogated as to each of said matters, and as if the same were hereinafter repeated.

I. And your orator prays that the said defendant, his associates, attorneys, privies, agents, clerks, servants and workmen, and each and every one of them, may be perpetually enjoined and restrained by an injunction issuing out of and under the seal of this Honorable Court, from directly or indirectly counterfeiting or duplicating the sound disc records made and sold by your orator, by any method, whether mechanical or chemical, or by any method or process whatsoever, by which the said sound records ^{ed} so made, and sold, by your orator, are counterfeited and duplicated as charged and stated in the Bill of Complaint, by which these counterfeited and duplicated records reproduce identically all the distinguishing and characteristic features of the records so recorded by your orator, and that the said counterfeiting and duplication of your orator's said original records as charged and stated in the

Bill of Complaint, may be decreed to be an infringement of your orator's rights in the premises, and in unfair and unjust competition; and that they shall not, neither directly nor indirectly, offer or advertise that they will do so, or put out any circulars or catalogues like or similar to the circular and catalogue hereinbefore referred to, or containing statements similar to those complained of herein; and that they shall not either directly or indirectly attempt to divert to themselves or to injure the business and good will built up and maintained by your orator in the premises.

II. And your orator further prays that the said defendant, his associates, attorneys, privies, agents, clerks, servants and workmen, and each and every of them, may be perpetually enjoined and restrained by an injunction issuing out of and under the seal of this Honorable Court, from directly or indirectly making, marking, selling or using or offering for sale, sound records having a red or partially red disc applied to the center thereof, in imitation and in the form adopted and used by your orator as hereinbefore set forth.

III. And your orator further prays that a preliminary or provisional injunction may issue out of and under the seal of this Honorable Court, pendente lite, enjoining and restraining the defendant, his associates, attorneys, privies, agents, clerks, servants and workmen, and each and every of them, until further order of this court, from further infringement and violation of your orator's rights in the premises, ~~as hereinbefore complained of, and for which perpetual in-~~junction is prayed; and that upon the issuance and service of said preliminary injunction, the said defendant be commanded

and ordered to deliver up to the Marshal of this court, in advance of the hearing, all such infringing flat disc records in his possession as hereinbefore complained of, to remain in the possession of and under the control of the jurisdiction of this Court until further order of this Court, together with any and all matrices and other appliances for making the same that may be in the possession or under the control of them, and likewise, any and all advertising matter, catalogues or the like relating to such counterfeit sound records.

IV. That this cause be referred to a Master for an accounting to ascertain and report the number of counterfeit sound records hereinbefore complained of, put out by the said defendant, Winant V. P. Bradley, with the radial dimension of each and the names of the artists, instrumentalists, orchestra, band or other means or source by which they were made, and likewise, the profits received by the defendant and his associates by reason of the unlawful acts herein complained of, and the damages caused your orator in the premises; and that the said defendant, Winant V. P. Bradley be required to pay to the Victor Talking Machine Company, the complainant herein, the profits and damages so reported by said Master.

V. That your orator may recover from the defendant its costs in this behalf, and may receive such other and further relief as to this Court may seem meet, and shall be agreeable to equity.

VI. That your orator need not be required to join with it, as parties-complainant, any of the various artists above referred to.

VII. That your orator be permitted to unite here-

in as parties-defendant, such other persons or concerns as it may hereafter ascertain to be aiding and abetting said defendant, Winant V. P. Bradley, in the acts herein complained of.

May it please your Honors to grant unto your orator, not only writs of injunction conforming to the prayers of this bill, but also a writ of subpoena ad respondendum, issuing out of and under the seal of this Honorable Court, directed to the said defendant, Winant V. P. Bradley, commanding him, at a certain time therein to be named, and under a certain penalty therein to be named, and a certain penalty therein to be limited, to be and appear before this Honorable Court then, and thereto answer unto this Bill of Complaint and to conform and abide by such order and decree in the premises as to this Honorable Court shall seem meet, and may be required by principals of equity and goodconscience.

And your orator will ever pray.

Stinson Williams
Solicitors for the Complainant,
55 Liberty Street,
Borough of Manhattan, City,
County and State of New York.

1 Mrs. Kelly

Of Counsel for Complainant,
604 Stephen Girard Bldg.,
Philadelphia, Penna.

February 16, 1909.

State of New Jersey)
County of Camden) ss:

Personally appeared before me Frank D. Middleton, a
Notary Public in and for the County of Camden, State
of New Jersey, Albert Clement Middleton, who
being duly affirmed, deposes and says that he is secretary of
the Victor Talking Machine Company, the complainant in the
foregoing Bill of Complaint; that he has read the said Bill of
Complaint, and that the facts therein stated are true, except
as to matters stated on information and belief, and that as to
these matters, he believes them to be true.

Albert Middleton

Affirmed and subscribed to before me this 16th day
of February, 1909.

Frank D. Middleton
NOTARY PUBLIC
My Commission Expires Dec. 22-1911.

4
WINANT V. P. BRADLEY

IMPORT

COMMISSIONER TO THE FACTOR

EXPORT

3518 AVENUE. I. BROOKLYN BOROUGH, N. Y. U. S. A.

November 1st. 1908.

To the Talking Machine Trade,
of the United States;
Gentlemen;

In re Continental Grand Opera Records (Disks only.)

I beg to enclose you advance list of high class Grand Opera Records, by prominent artists of world - wide fame at prices averaging not more than half those now charged for the original records. The records themselves are pressed up on the very highest class of material finished equal to the original. The character of the record itself is identical with the original record and experts, who have listened to my samples, are unable to determine between the original and the copy.

This company is supported in its right to so reproduce by decision of the United States Court in this circuit and is prepared with ample facilities to fill orders in any quantity.

An additional number of one hundred to one hundred and fifty of the most popular records now in existence will be ready by the time I shall have received a reply to this letter. If you are interested please let me hear from you at your earliest convenience, and I shall be pleased to quote you prices, discounts and terms.

Yours very truly.

WINANT V. P. BRADLEY, SALES AGENT.

P. S. These records are made in this country from Mothers imported from foreign countries.

COMPLAINANT'S EXHIBIT A.

NOTARY PUBLIC,
Commission Expires Feb. 5, 1913.
504 STEPHEN GIRARD BLDG.
PHILADELPHIA.

Maria Barrientos, Soprano
 Dinorah Meyerbeer Part II; Aria di
 Dinorah "Ombra leggera"
 Fra Diavolo--Auber Cavatina di Zerlina

Mario Sammarco, Baritone
 Tannhauser-Wagner Romanza di Volframo
 "Oh, tu bell' astro incantato"

Alessandro Bonci, Tenor
 Rigoletto Verdi Ballata del Duca
 "Questa o quella"
 L'Africana Meyerbeer Aria di Vasco
 "O Paradiso"

Aida Verdi Romanza di Radames
 Lucia di Lammermoor Donizetti
 Lucia d' Lammermoor, Stracciari
 Dinorah, Fra Diavolo Maria Barrientos
 Tannhauser Sammarco
 Ave Maria Regina Pacini
 Carmen Armida Parsi-Pettinella
 Lohengrin Francisco Vignas
 La Danza Antonio Magini-Colletti
 Stabat Mater Oreste Luppi
 La Tosca, La Boheme Eduardo Castellano
 Melodie Souvenir Maud Powell, Violinist.
 Gluck Drda

Carmen, Toreador Song Anton Van Rooy
 Sung in French, Orchestra Accompaniment Bizet

Les Rameaux, the Palms
 Bolero from Les Vespres Lillian Blauvelt
 Siciliennes Sung in French, Orchestra accomp.

Following is a forecast of a
 Catalogue, now in press, of a
 list of ten inch disc records.

These records are all dupli-
 cates from original records made
 by the artists whose names are
 used herein. They are equal to
 the originals in all respects, in-
 cluding composition and finish.

The forthcoming catalogue
 will comprise all of the best and
 most popular foreign records,
 made by the most noted singers.

Continental Record Co.
 New York.

FOR DISCOUNTS ADDRESS
 WINANT V. P. BRADLEY,
 Sales Agent,
 3518 Avenue I, Brooklyn, N. Y.

My Commission Expires Dec. 22, 1913

NOTARY PUBLIC
 Commission Expires Feb. 6, 1913.
 604 STEPHEN GIRARD BLDG.
 PHILADELPHIA

"Complainant's Exhibit"
 Alexander Park

Ten Inch Records.

Manon Il sogno (The Dream) Caruso
 Massenet
 Wiegenlied (Cradle Song) Schumann-Heink
 Brahms
 Walkure- (Brunnhilde's Battle Cry) Gadski
 German Wagner
 Martha- Qui sola vergin rosa Abbott
 (Last Rose of Summer) in Italian Flotow
 A Dream- Bartlett Evan Williams
 Trovatore--Stride la vampa Louise Homer
 (Fierce flames are soaring) Italian Verdi

Marie Michailowa, Soprano

Traviata-Addio del passato
 (Farewell to the Bright Visions) Verdi
 Freischutz--Air Weber
 Lucia-Mad Scene Donizetti
 Serenade- Gounod
 Ave Maria- Gounod
 Cradle Song- Napravnik

Pol Plancon, Bass

Noel- (Holy Night) Adam
 Marta-Cazone del porter in Italian. Flotow

Antonio Scotti, Baritone

Pagliacci-Prologo (Prologue) Leoncavallo
 Giuseppe Campanari, Baritone
 Trovatore-Il balen (Her sweet glances) Verdi

Nielsen & Constantino

Traviata-Addio del Passato
 (Farewell to the bright visions) Verdi

Emilio De Gogorza, Baritone

Linda Mia- (Spanish Folk Song) Rossini

Regina Pinkert, Soprano

Il Barbiere di Siviglia (Rossini) Part II, Cav-
 atina di Rosina (Cabaletta) "Io sono docile"

Soprano and Baritone Duets by Eugenia Burzio and Antonio

Magini-Coletti

Il Trovatore-(Verdi) Atto IV, Part I,
 Duetto Elenora-Conte ("Qual voce")
 Il Trovatore (Verdi) Atto IV, Part II,
 Duetto Elenora-Conte ("Conte ne cessi")

Marcel Journet, Bass

Faust-Le veau d'or (The Calf of Gold) Gounod

Giovanni Zenatello, Tenor

La Traviata (Verdi) Aria di Alfredo
 ("De miei bollenti spiriti")

Otello (Verdi) Morte d'Otello
 (Nun mi tema)

Pagliacci (Leoncavallo) Cantabile di Canio
 ("Un tal gioco, credetelo")

Adamo Didur, Basso

Faust (Gounod) Strofe di Mefistofele
 Dio dell' or

(5 copies)

CIRCUIT COURT OF THE UNITED STATES
Eastern District of New York.

In Equity No.

Victor Talking Machine Company, a corporation
organized and existing under the laws of the State of New
Jersey,

Complainant,

vs.

Winant V. P. Bradley, a citizen, resident and
inhabitant of the Eastern District of New York,

Defendant.

AFFIDAVIT OF P. D. FERNANDES ON BEHALF OF
COMPLAINANT SUR MOTION FOR PRELIMINARY INJUNCTION.

State of New York,

County of New York, SS.:

P. D. FERNANDES, being duly sworn according to
law deposes and says as follows:

I am of lawful age and am a resident of the
City and State of New York. On or about January 9, 1909,
I received a call from Mr. Winant V. P. Bradley, of the
Borough of Brooklyn, City of New York. Mr. Bradley
represented to me that he was soliciting orders for certain
disc talking-machine records known as the Continental
Grand Opera Records at the price of sixty cents (60¢)
each. He left with me a typewritten circular and also a
printed catalogue. From this said catalogue I selected

four records and gave an order to said Bradley to supply me with said records one of which was entitled "Pagliacci" purporting to be sung by Antonio Scotti, Baritone, and in accordance with my order to said Bradley this talking-machine record was delivered to me on January 29, 1909, with the other records which I so ordered, and on the back of this record I have scratched my initials, namely, "P.F. 1/29/09", and this said record accompanies this affidavit and is marked "Complainant's Exhibit, Defendant's Counterfeit Record". After receiving these four records, including this "Complainant's Exhibit, Defendant's Counterfeit Record", I delivered the entire four to Mr. Massie, of counsel for The Columbia Phonograph Company (General), and I identify this record by the fact that my initials and the date, as I have stated above, are scratched on the back thereof. The said Bradley also delivered to me a number of circulars and catalogues, and accompanying this affidavit is one of said typewritten circulars which is marked "Complainant's Exhibit, Defendant's Circular", and also one of said catalogues accompanies this affidavit and is marked "Complainant's Exhibit, Defendant's Catalogue". I have paid the said Bradley Two Dollars and forty cents (\$2.40) for the said four records hereinbefore mentioned by mailing to said Bradley a Post Office Money Order therefor addressed to him at No. 3518 Avenue I, Brooklyn, New York.

P. W. Fernandez

Subscribed and sworn to before me,
this 11th day of February, 1909.

Ralph L. Scott

Notary Public,
New York County.

IN THE CIRCUIT COURT OF THE UNITED STATES
For the Eastern District of New York.

VICTOR TALKING MACHINE CO.

vs.

In Equity.

WINANT V. P. BRADLEY.

"COMPLAINANT'S EXHIBIT, DEFENDANT'S CATALOGUE".



FOLLOWING is a forecast of a Catalogue, now in press, of a list of ten inch disc records.

These records are all duplicates from original records made by the artists whose names are used herein. They are equal to the originals in all respects, including composition and finish.

The forthcoming catalogue will comprise all of the best and most popular foreign records, made by the most noted singers.

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Number ALICE NIELSEN, *Soprano*
750 Traviata—Addio del passato (Farewell to the Bright Visions) Verdi
with orchestra
MARCEL JOURNET, *Bass*
775 Faust—Le veau d'or (The Calf of Gold) Gounod
POL PLANCON, *Bass*
800 Marta—Canzone del portier (Italian) Flotow
801 Noël (Holy Night) Adam
EMILIO DE GOGORZA, *Baritone*
825 For All Eternity (English)
826 Barbieri—Largo al factotum (Room for the Factotum) Italian Rossini
ANTONIO SCOTTI, *Baritone*
850 Pagliacci—Prologo (Prologue) Leoncavallo
GIUSEPPE CAMPANARI, *Baritone*
875 Trovatore—Il balen (Her Sweet Glances) Verdi
JOHANNA GADSKI, *Soprano*
900 Walküre—Brunnhilde's Battle Cry (German) Wagner
with orchestra
BESSIE ABBOTT, *Soprano*
925 Martha—Qui sola vergin rosa (Last Rose of Summer) In Italian Flotow
MARIE MICHAILOWA, *Soprano*
950 Freischütz—Air Weber

Number
951 Traviata—Addio del passato (Farewell to the Bright Visions) Verdi
with flute obbligato—
953 Pearl of Brazil Thou Brilliant Bird David
with violin obbligato—
954 Ave Maria Grouned
with cello obbligato
955 Cradle Song Napravnik
H. EVAN WILLIAMS, *Tenor*
975 A Dream Bartlett
MAUD POWELL, *Violinist*
1000 Melodie Gluck
1001 Souvenir Drdla
DISC RECORDS, 10 $\frac{3}{4}$ INCHES
GIUSEPPE ANSELM, *Tenor*
250 Cavalleria Rusticana (Mascagni) Siciliana di Turiddu (O Lola ch'hai di latti)
251 Don Giovanni (Mozart) Aria di Ottavio (Il mio tesoro intanto)
252 Fedora (Giordano) Arioso di Loris (Amor ti vieta)
253 I Pagliacci (Leoncavallo) Arioso di canio (Vesti la giubba)
254 Rigoletto (Verdi) Aria del Duca Parte II, (Parmi veder le lacrime)
MARIA BARRIENTOS, *Soprano*
300 Dinorah (Meyerbeer)—Aria di Dinorah, Part I (Ombra leggera)

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Number

301 Fra Diavolo (Auber)—Cavatina di Zeilina (Or
son sola, alfin respiro)

302 La Sonnambula (Bellini)—Cavatina di Amnia
Parte I, Aria (Come per me sereno)

AMEDEO BASSI, *Tenor*

325 Fedora (Giordano)—Arioso di Loris (Amor ti
vieta)

ALESSANDRO BONCI, *Tenor*

350 Aida (Verdi)—Romanza di Radames (Celeste
Aida)

351 Don Pasquale (Donizetti) Aria di Ernesto (Cer-
chero lontana terra)

352 I Pescatori di Perle (Bizet)—Romanza di Nadir
(Mi par d'udir ancora)

353 I Puritani (Bellini)—Cantabile di Arturo (A te, o
cara)

362 Zaza (Leoncavallo)—Romanza di Milio (Maipin
Zaza)

354 L'Africana (Meyerbeer)—Aria di Vasco (O
Paradiso)

355 L'Elisir d'amore (Donizetti)—Cavatina di Nemorino
(Quanto e bella)

356 Manon Lescaut (Puccini)—Romanza di Des
Grioux (Donna non vidi mai)

357 Lucia di Lammermoor (Donizetti)—Cabaletta di
Edgardo (Tu che a Dio Spiegasti l'ali)

358 Marta (Flotow)—Romanza di Lionello (M'appar)

359 Rigoletto (Verdi)—Ballata del Duca (Questa o
quella)

Number

360 Werther (Massenet)—Stanze de Ossian (Ah, non
mi ridestar)

361 Ave Maria (Gounod)—con accompagnamento di
violino organo e pianoforte

CARLO DANI, *Tenor*

400 Manon (Massenet)—Sogno Di Des Grioux (Chi-
udo gli occhi)

ADAM DIDUR, *Bass*

425 Faust (Gounod)—Strofe di Mefistofele (Dio
dell'or)

426 Mefistofele (Boito)—Prologo (Ave, Signor)

427 Vita bretone (Mugnone)—Canz. di Papa Silvestro
(Vivea nel tempo antico) con accomp. di violino

SALOMEA KRUSCENISKI, *Soprano*

450 Adriana Lecouvreur (Cilea)—Aria dei fiori
(Poveri fior)

ORESTE LUPPI, *Bass*

475 Ernani (Verdi)—Cavatina di Silva (Infelice! e
tuo credevi)

476 Stabat Mater (Rossini)—Pro peccatis, con ac-
compagnamento d'organo

ANTONIO MAGINI-COLETTI, *Baritone*

500 Carmen (Bizet)—Strofe di Toreador (Con voi
ber)

Ralph L. Scott

Notary Public,
New York County.

IN THE CIRCUIT COURT OF THE UNITED STATES
For the Eastern District of New York.

VICTOR TALKING MACHINE CO.

vs.

In Equity.

WINANT V. P. BRADLEY.

"COMPLAINANT'S EXHIBIT, DEFENDANT'S CATALOGUE".

Number

- 501 La Danza (Rossini)—Tarantella (Gia la luna in messo al mare)
- 502 Rigoletto (Verdi)—Aria di Rigoletto, Part I (Il sol per me non ha piu raggi)
- 503 Lucia di Lammermoor (Donizetti)—Cavatina di Enrico (Cruda, funesta smania)

REGINI PACINI, *Soprano*

- 525 Il Barbiere di Siviglia (Rossini)—Cavatina di Rosina, Part I, Aria (Una voce poco fa)
- 526 Il Flauto magico (Mozart)—Aria di Regina (Gli angui d'inferno)
- 527 Ave Maria (Gounod)—con accompagnamento di violino
- 528 Variazioni (Proch)—Deh torna, mio bene
- 529 Mirella (Gounod)—Valzer (Oh! d'amor messaggera)

ARMIDA PARSİ-PETTINELLA, *Contralto*

- 550 Carmen (Bizet)—Seguidilla (la sul bastion di Siviglia)
- 551 Mignon (Thomas)—Romanza di Mignon (Non conosci il bel suol)
- 552 La Gioconda (Ponchielli)—Romanza della Cieca (Voce di donna o d'angelo)

NUMBER

GIANNINA RUSS, *Soprano*

- 575 La Forza del destino (Verdi)—Finale II (La Vergine degli angeli) con coro
- 576 Leggenda Valacca (Braga)—Oh quali mi risvegliano, con acc. di violino e pianoforte (Violino, Alessandro Genesini)

MARIO SAMMARCO, *Baritone*

- 600 Adiana Lecouvreur (Cilea)—Monologo di Michonnet (Ah! stupenda, mirabile)
- 601 Tannhauser (Wagner)—Romanza di Volframo (Oh tu bell astro incantator)

RICCARDO STRACCIARI, *Baritone*

- 625 Aida (Verdi)—Sortita d'Amonasro (Quest'assisa ch'io vesto)
- 626 Lucia di Lammermoor (Donizetti)—Cavatina di Enrico (Cruda, funesta smania)

FRANCISCO VIGNAS, *Tenor*

- 650 Lohengrin (Wagner)—Addio di Lohengrin (Cignofedel)
- 651 L'Africana (Meyerbeer)—Aria di Vasco (O Paradiso)

GIOVANNI ZENATELLO, *Tenor*

- 675 Otello (Verdi)—Morte d'otello (nium mi tema)

Ralph L. Scott

Notary Public,
New York County.

IN THE CIRCUIT COURT OF THE UNITED STATES
For the Eastern District of New York.

VICTOR TALKING MACHINE CO.

vs.

In Equity.

WINANT V. P. BRADLEY.

"COMPLAINANT'S EXHIBIT, DEFENDANT'S CATALOGUE".

NUMBER

- 676 La Traviata (Verdi)—Aria di Alfredo (De' miei
bollenti spiriti)
- 677 La Traviata (Verdi)—Scena della borsa (Questa
donna conoscete?)
- 678 Manon Lescaut (Puccini)—Romanza di Des
Grieux (Donna non vidi mai)

DUETS

- 700 I Pescatori di perle (Bizet)—Atto. I. Duetto
Nadir-Zurga (Del tempio al limitar)
Bonci, Magini-Coletti
- 701 Il Trovatore (Verdi)—Atto IV. Duetto Eleonora-
Conte Part I. (Qual Voce)
Burzio, Magini-Coletti
- 725 La Favorita (Donizetti)—Atto I Coro d'intro-
- 725 La Favorita (Donizetti)—Atto. I. Coro d'intro-
duzione (Ball'alba foriera)
Coristi Delma Scala

Ralph L. Scott

Notary Public,
New York County.

IN THE CIRCUIT COURT OF THE UNITED STATES
For the Eastern District of New York.

VICTOR TALKING MACHINE CO.

vs.

In Equity.

WINANT V. P. BRADLEY.

"COMPLAINANT'S EXHIBIT, DEFENDANT'S CIRCULAR".

WINANT V. P. BRADLEY

SALES AGENT TO THE MANUFACTURER

IMPORT.

DOMESTIC.

EXPORT.

3518, Avenue I, Brooklyn Borough, New York, U.S.A.

To the Talking Machine Trade;

Gentlemen;

In re Continental Grand Opera Disk Records

I hand you herewith catalog of Continental Disk Records, made in this country from Mother records imported from foreign countries. These records are equal to the very best now on this market in all respects. Prices by artists as follows;

Michailowa, De Gogorza, Journet, and Blauvelt at-----40¢, . each.

Caruso, Schuman-Heink, Galski, Abbott, Plancon, Scotti, Campanari, Neilson, Constantino, Pinkert, Burzio, Mangini-Coletti, Zanatello, Didur, Barrieutos, Sammarco, Ponci, Stracciari, Barrientos, Pacini, Parsi-Pettinella, Vignas, Luppi, Castelleno, Powell, Von Rooy, at-----60¢, . each.

I shall hope to receive your esteemed order.

Yours truly,
WINANT V. P. BRADLEY, Sales Agent.

Continental Record Company,
New York City. U.S.A.

P.S. I am selling agent for the STAR line of disc talking machines, shall I quote you?

Ralph L. Scott

Notary Public,

New York County

Raymond R. Wiley
Research Library

CIRCUIT COURT OF THE UNITED STATES.

Eastern District of New York.

In Equity No.

Victor Talking Machine Company, a corporation organized
and existing under the laws of the State of New Jersey,
Complainant,

vs.

Winant V.P. Bradley, a citizen, resident and inhabitant
of the Eastern District of New York,
Defendant.

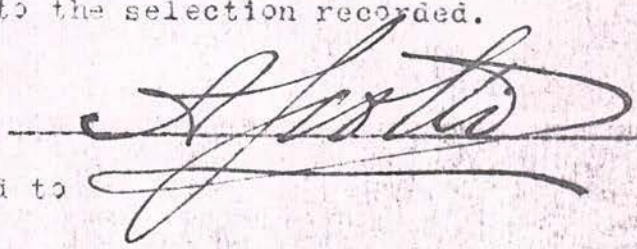
Affidavit of Antonio Scotti, on behalf of Complainant,
sur motion for Preliminary Injunction.

STATE OF NEW YORK)
 : SS
COUNTY OF NEW YORK)


Antonio Scotti, being duly sworn according to law,
deposes and says as follows:

I am baritone of the Metropolitan Opera Company,
and am at present residing in the Borough of Manhattan,
City of New York. During or about the month of December,
1903, I entered into an agreement with the Victor Talking
Machine Company of Camden, New Jersey, whereby I agreed
for a certain consideration to sing exclusively for the
Victor Talking Machine Company for the purpose of having
the selections which I sang recorded on sound records
of the disc type, so that such selections could be repro-
duced on the reproducing apparatus of the Victor Talking

Machine Company, and since then I have continued to have such an agreement with the said Victor Talking Machine Company. During or about the month of December 1903, pursuant to my said agreement with the Victor Talking Machine Company I sang for the purpose of having these selections recorded for these sound records, a number of selections, among which was one which is known as Prologo from I'Pagliacci. I have this day heard the record, marked for identification "Complainant's Exhibit, Complainant's Scotti Record" played in the usual manner upon a Victor Talking Machine, to reproduce the sounds recorded thereon, and state that this is a duplicate or copy of the selection which I so sang during or about the month of December 1903, the same being record number 81,021, of the Victor Talking Machine Company, and say this record is a duplication of the original record of my voice, recorded as aforesaid. I have also this day heard reproduced in the usual manner upon a Victor Talking Machine a record which is marked for identification, "Complainant's Exhibit, Defendant's Counterfeit Record," and state that this last named record is also a duplicate and copy of the original record of my voice recorded, as aforesaid, viz: the said Prologo from I'Pagliacci. These two records above mentioned are identical in every respect and detail as to the selection recorded.


Sworn and subscribed to
before me this 10th day of

February, 1909.


Notary Public #84,
New York County.

CIRCUIT COURT OF THE UNITED STATES.

Eastern District of New York.

In Equity No.

Victor Talking Machine Company, a corporation
organized and existing under the laws of the State of
New Jersey,

Complainant,

vs.

Winant V.P. Bradley, a citizen, resident and in-
habitant of the Eastern District of New York,

Defendant.

Affidavit of Emilio de Gogorza on behalf of complainant
sur motion for preliminary injunction.

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

Emilio de Gogorza, being duly sworn, according to
law, deposes and says as follows:

I am a lyric artist, and at present reside in the
Borough of Manhattan, City of New York; for sometime and
prior to 1903 and ever since that time, I have been confi-
dential advisor to the Victor Recording Laboratory as
a Musical Expert, and particularly in connection with
the engagements and contracts of the Grand Opera Company
and others. In this capacity, about December 1903, I
arranged between the Victor Talking Machine Co., of Camden,
N.J. and Sr. Antonio Scotti, then a member of the Metro-
politan Opera Company, a contract whereby Sr. Scotti

agreed, for a certain consideration, to sing exclusively for the Victor Talking Machine Company for the purpose of making records of his voice of the type known as flat disc records to be used in the reproduction of such selections as he sang upon the reproducing apparatus of the Victor Talking Machine Company. In pursuance of this contract, Sr. Scotti did, during the month of December, 1903, sing for the purpose of having the selections recorded for these sound records, several selections, among which was one which is known as the Prologo from I Pagliacci by R. Leoncavallo. I was present in the Laboratory of the Victor Talking Machine Company in the Borough of Manhattan, City of New York, when Sr. Scotti sang this selection and when this record was made.

I have this day heard the record, marked for identification "Complainant's Exhibit, Complainant's Scotti Record", played in the usual manner for reproducing the recorded selection, and state that by reason of my musical knowledge, and also by reason of my expert familiarity, for many years, with Sr. Scotti's vocal characteristics, that this record is the one which I heard recorded by Sr. Scotti, that is to say that this record, which is #81,021 of the Victor Catalogue, is a duplication of the original record which I so heard recorded as aforesaid. I have also this day heard reproduced in the usual manner upon a Victor Talking machine the record, which is marked for identification, "Complainant's Exhibit, Defendant's Counterfeit Record", and state most emphatically that this last named record is also a duplicate and copy of the original record which I so heard recorded as afore-

said, namely, the said Prologo from I Pagliacci. I
cannot state too emphatically that these two records are
identical in every respect and detail.

Milinda Bogorzs.

Sworn and subscribed to

before me this 10th day of

February, 1909.

Elsie C. Duff

Notary Public #84,

New York County.

CIRCUIT COURT OF THE UNITED STATES.

Eastern District of New York.

In Equity No.

Victor Talking Machine Company, a corporation organized
and existing under the laws of the State of New Jersey,
Complainant,

vs.

Winant V.P. Bradley, a citizen, resident and inhabitant
of the Eastern District of New York,
Defendant.

Affidavit of C. H. H. Booth, on behalf of Complainant,
sur Motion for Preliminary Injunction.

STATE OF NEW YORK)
 : SS:
COUNTY OF NEW YORK)


C. H. H. Booth, being duly sworn according to
law, deposes and says, as follows:

I am Church Organist and Pianist, and for many years
made a specialty of playing accompaniments for singers for
the purpose of making records. For several years, and
especially during the year 1903, and 1904, I was engaged
by the Victor Talking Machine Company of Camden, New
Jersey, to play such accompaniments for many of the Grand
Opera singers of the Metropolitan Company and others.
During the month of December, 1903, I played for Sr. Scotti
at the Laboratory of the Victor Talking Machine Company
in the Borough of Manhattan, City of New York, the accom-

paniments for several selections of which he made records of his voice, among them being the selection which is known as the Prologo from I'Pagliacci. I have this day heard the record, marked for identification, "Complainant's Exhibit, Complainant's Scotti Record" played in the usual manner upon a Victor talking Machine, to reproduce the sounds recorded thereon, and state that this is a duplicate or copy of the selection for which I played the accompaniment for Sr. Scotti, during or about the month of December, 1903, the same being record number 81,021 of the Victor Talking Machine Company, and say this record is a duplication of the original record for which I played the accompaniment as aforesaid. I have also heard this day reproduced in the usual manner upon a Victor Talking Machine a record which is marked for identification, "Complainant's Exhibit, Defendant's Counterfeit Record", and state that this last named record is also a duplicate and copy of the original record of Sr. Scotti's voice for which I played the accompaniment as aforesaid, namely, the said Prologo from I'Pagliacci. These two records above mentioned are identical in every respect and detail as to the selection recorded.

Sworn and subscribed to
before me this 11th day of
February, 1904

Christopher H. H. Booth


Notary Public ~~for~~,
New York County.

Eastern District of New York.

In Equity No.

Victor Talking Machine Company, a corporation organized and existing under the laws of the State of New Jersey.

[illegible]

H. EVANS WILLIAMS, TENOR.

and in accordance with the said order the said Two Talking Machines records were delivered to the said THE EDISONIA COMPANY, at its said office on Jan. 30th, 1909, with eighteen (18) other Talking Machine records, and on the back of each of the said two records, I have scratched my name as follows; - "A. O. PETIT, 1_30-1909" and the date of its receipt by THE EDISONIA COMPANY. and these said two records accompany this affidavit and are marked "COMPLAINANT'S EXHIBIT", DEFENDANT'S RECORDS PURCHASED BY THE EDISONIA COMPANY".

~~at the~~ said address No. 57 HALSEY STREET, in the city of NEWARK, State of NEW JERSEY, a catalog from WINANT V. P. BRADLEY, of the BOROUGH OF BROOKLYN, and State of NEW YORK, containing a list of Talking Machines records for sale by the said WINANT V. P. BRADLEY. On this said catalog, I have placed the stamp of THE EDISONIA COMPANY, as follows; "EDISONIA CO. 57 HALSEY ST. NEWARK, N. J. and attach the said catalog to this affidavit, marked "COMPLAINANT'S EXHIBIT", DEFENDANT'S CATALOG FROM WHICH THE EDISONIA COMPANY'S ORDER OF DEC. 4th, 1908 WAS MADE"

On Dec. 4th 1908, the said THE EDISONIA COMPANY. ordered from the said WINANT V. P. BRADLEY, twenty (20) of the Talking Machine records, listed in the said catalog, said order being given in the form of an addressed letter to the said WINANT V. P. BRADLEY, by the said THE EDISONIA COMPANY, in which was recited by the catalog numbers the several Talking Machine records, which were desired to be purchased. Among the Talking Machine records so ordered by the said THE EDISONIA COMPANY, from the said WINANT V. P. BRADLEY, on Dec. 4th, 1908, were two records listed as follows;-in the said catalog:

#801 "NOEL" (HOLY NIGHT) Adams

POL PLANCON BASS.

#975 "DREAM" BARTLETT

H. EVANS WILLIAMS, TENOR.

and in accordance with the said order the said two Talking Machines records were delivered to the said THE EDISONIA COMPANY, at its said office on Jan. 30th, 1909, with

eighteen (18) other Talking Machine records, and on the back of each of the said two records, I have scratched my name as follows;- "A. O. PETIT, 1_30-1909 " and the date of its receipt by THE EDISONIA COMPANY. said two records accompany this affidavit and are marked "COMPLAINANT'S EXHIBIT", DEFENDANT'S RECORDS PURCHASED BY THE EDISONIA COMPANY".

AMONG the said twenty (20) Talking Machine records delivered to **THE EDISONIA COMPANY** on Jan. 30th, 1909, pursuant to the order of December 4th, 1908, were the following records:-

#800 MARTA CARZONE DEL PORTER (Italian) Flotow,
EMILIO DE GORGORZA,
#850 PAGLIACCI (Prologue) LEONCAVALLO
ANTONIO SCOTTI BARITONE.
#875 "TROVATORE" LL. BALLEN (Her Sweet Glances) VERDI
G. CAMPANARI BARITONE.
#900 "WALKURE" Brunnhilde's Battle Cry German WAGNER
JOHANNA CADSKI SOPRANO
#951 "TRAVIATA" Addio Del Passato (Farewell to the
Bright Visions)
MARIE MICHAILOVA SOPRANO
#995 "For All Eternity" ENGLISH.
EMILIO DE GORGORZA BARITONE.

and upon the ~~back~~ back of each six last mentioned talking machine records I have scratched my name and the date of the delivery of the same to THE EDISONIA COMPANY, as follows:
"A. O. PETIT, 1-30-09" and these said records accompany this affidavit and are marked "COMPLAINANT'S EXHIBIT. DEFENDANT'S RECORDS SOLD TO THE EDISONIA COMPANY."

The bill for the said twenty Talking Machine records so purchased by the said THE EDISONIA COMPANY from the above named defendant was received by the said THE EDISONIA COMPANY, shortly after the delivery of the said twenty Talking Machine records to THE EDISONIA COMPANY, as before set forth, and was for the sum of eleven dollars and forty cents (\$11.40) I have attached this said bill to my affidavit, placing upon the same my name as follows; A. O. PETIT, PRESIDENT OF THE EDISONIA COMPANY and have marked the same "COMPLAINANT'S EXHIBIT BILL of Jan. 29th 1909 for records purchased from defendant", which said bill has been paid in full by the said THE EDISONIA COMPANY.

Raymond R. Wile
Research Library

New York, January 29th 1909.

1909

The Edsonia Co., Newark, N.J.

To Continental Record Co., Dr.

147 WEST 35th STREET

Terms 2 % 10-30 days net.

All claims must be made within 10 Days

To. 3 Continental Records @ 40 ¢ each

" 17 "

" @ 60 ¢ "

\$. 11.40

Complainant's Exhibit Bill of Jan 29-1909 for record
purchased from defendant.

W. E. H. President of
The Edsonia Company.

Robert W. Turner
Notary Public
in and for Newark
N. J.

NUMBER

676 La Traviata (Verdi)—Aria di Alfredo (De' miei bollenti spiriti)

677 La Traviata (Verdi)—Scena della borsa (Questa donna conoscete?)

678 Manon Lescaut (Puccini)—Romanza di Des Grieux (Donna non vidi mai)

DUETS

700 I Pescatori di perle (Bizet)—Atto. I. Duetto Nadir-Zurga (Del tempio al limitar)
Bonci, Magini-Coletti

701 Il Trovatore (Verdi)—Atto IV. Duetto Eleonora-Conte Part I. (Qual Voce)
Burzio, Magini-Coletti

725 La Favorita (Donizetti)—Atto I Coro d'intro-

725 La Favorita (Donizetti)—Atto. I. Coro d'introduzione (Ball'alba foriera)
Coristi Delma Scala

FOR DISCOUNTS ADDRESS
WINANT V. P. BRADLEY,
Sales Agent,

3519 Avenue L, Brooklyn, N. Y.

Robert W. Turner
Notary Public
in and for Newark, N. J.



OLLOWING is a forecast of a Catalogue, now in press, of a list of ten inch disc records.

These records are all duplicates from original records made by the artists whose names are used herein. They are equal to the originals in all respects, including composition and finish.

The forthcoming catalogue will comprise all of the best and most popular foreign records, made by the most noted singers.

Complement with Exhibit Defendant Catalogue from which the Edizioni Co. order of

Dec 4, 1911

Number

301 Fra Diavolo (Auber)—Cavatina di Zerlina (*Oi son sola, alfin respiro*)

302 La Sonnambula (Bellini)—Cavatina di Amnia Parte I, Aria (*Come per me sereno*)

AMEDEO BASSI, *Tenor*

325 Fedora (Giordano)—Arioso di Loris (*Amor ti vieta*)

ALESSANDRO BONCI, *Tenor*

350 Aida (Verdi)—Romanza di Radames (*Celeste Aida*)

351 Don Pasquale (Donizetti) Aria di Ernesto (*Cerchero lontana terra*)

352 I Pescatori di Perle (Bizet)—Romanza di Nadir (*Mi par d'udir ancora*)

353 I Puritani (Bellini)—Cantabile di Arturo (*A te, o cara*)

362 Zaza (Leoncavallo)—Romanza di Milio (*Maipin Zaza*)

354 L'Africana (Meyerbeer)—Aria di Vasco (*O Paradiso*)

355 L'Elisir d'amore (Donizetti)—Cavatina di Nemorino (*Quanto e bella*)

356 Manon Lescaut (Puccini)—Romanza di Des Grieux (*Donna non vidi mai*)

357 Lucia di Lammermoor (Donizetti)—Cabaletta di Edgardo (*Tu che a Dio Spiegasti l'ali*)

358 Marta (Flotow)—Romanza di Lionello (*M'appar*)

359 Rigoletto (Verdi)—Balla del Duca (*Questa o quella*)

Number

360 Werther (Massenet)—Stanze de Cossian (*Ah, non mi ridestar*)

361 Ave Maria (Gounod)—con accompagnamento di violino organo e pianoforte

CARLO DANI, *Tenor*

400 Manon (Massenet)—Sogno Di Des Grieux (*Chiodo gli occhi*)

ADAM DIDUR, *Bass*

425 Faust (Gounod)—Strofe di Mefistofele (*Dio dell'or*)

426 Mefistofele (Boito)—Prologo (*Ave, Signor*)

427 Vita bretone (Mugnone)—Canz. di Papa Silvestro (*Vivea nel tempo antico*) con accomp. di violino

SALOMEA KRUSCENISKI, *Soprano*

450 Adriana Lecouvreur (Cilea)—Aria dei fiori (*Poveri fior*)

ORESTE LUPPI, *Bass*

475 Ernani (Verdi)—Cavatina di Silva (*Infelice! e tuo credevi*)

476 Stabat Mater (Rossini)—Pro peccatis, con accompagnamento d'organo

ANTONIO MAGINI-COLETTI, *Baritone*

500 Carmen (Bizet)—Strofe di Toreador (*Con voi ber*)

ALICE NIELSEN, *Soprano*
 Number
 750 Traviata—Addio del passato (Farewell to
 the Bright Visions) Verdi
with orchestra
 MARCEL JOURNET, *Bass*
 775 Faust—Le veau d'or (The Calf of Gold) Gounod
 POL PLANCON, *Bass*
 800 Marta—Canzone del porter (Italian) Flotow
 801 Noël (Holy Night) Adam
 EMILIO DE GOGORZA, *Baritone*
 825 For All Eternity (English)
 826 Barbieri—Largo al factotum (Room for the
 Factotum) Italian Rossini
 ANTONIO SCOTTI, *Baritone*
 850 Pagliacci—Prologo (Prologue) Leoncavallo
 GIUSEPPE CAMPANARI, *Baritone*
 875 Trovatore—Il balen (Her Sweet Glances) Verdi
 JOHANNA GADSKI, *Soprano*
 900 Walküre—Brunnhilde's Battle Cry (German)
 Wagner
with orchestra
 BESSIE ABOTT, *Soprano*
 925 Martha—Qui sola vergin rosa (Last Rose of
 Summer) In Italian Flotow
 MARIE MICHAILOWA, *Soprano*
 950 Freischütz—Air Weber

Number
 951 Traviata—Addio del passato (Farewell to
 the Bright Visions) Verdi
with flute obbligato—
 953 Pearl of Brazil Thou Brilliant Bird David
with violin obbligato—
 954 Ave Maria Gounod
with cello obbligato
 955 Cradle Song Napravnik
 H. EVAN WILLIAMS, *Tenor*
 975 A Dream Bartlett
 MAUD POWELL, *Violinist*
 1000 Melodie Gluck
 1001 Souvenir Drdla
 DISC RECORDS, 10 $\frac{3}{4}$ INCHES
 GIUSEPPE ANSELMi, *Tenor*
 250 Cavalleria Rusticana (Mascagni) Siciliana di
 Turiddu (O Lola ch'hai di latti)
 251 Don Giovanni (Mozart) Aria di Ottavio (Il mio
 tersoro intanto)
 252 Fedora (Giordano) Arioso di Loris (Amor ti
 vieta)
 253 I Pagliacci (Leoncavallo) Arioso di canio (Vesti la
 giubba)
 254 Rigoletto (Verdi) Aria del Duca Parte II, (Parmi
 veder le lacrime)
 MARIA BARRIENTOS, *Soprano*
 300 Dinorah (Meyerbeer)—Aria di Dinorah, Part I
 (Ombra leggera)

Number

- 501 La Danza (Rossini)—Tarantella (Gia la luna in messo al mare)
- 502 Rigoletto (Verdi)—Aria di Rigoletto, Part I (Il sol per me non ha piu raggi)
- 503 Lucia di Lammermoor (Donizetti)—Cavatina di Enrico (Cruda, funesta smania)

REGINI PACINI, *Soprano*

- 5 Il Barbiere di Siviglia (Rossini)—Cavatina di Rosina, Part I, Aria (Una voce poco fa)

Il Flauto magico (Mozart)—Aria di Regina (Gli angui d'inferno)

ve Maria (Gounod)—con accompagnamento di violino

riazioni (Proch)—Deh torna, mio bene

illa (Gounod)—Valzer (Oh! d'amor mes-gera)

A PARSIPETTINELLA, *Contralto*

(Bizet)—Seguidilla (Ia sul bastion di a)

(Thomas)—Romanza di Mignon (Non il bel suol)

la (Ponchielli)—Romanza della Cieca donna o d'angelo)

NUMBER

GIANNINA RUSS, *Soprano*

- 575 La Forza del destino (Verdi)—Finale II (La Vergine degli angeli) con coro
- 576 Leggenda Valacca (Braga)—Oh quali mi risvegliano, con acc. di violino e pianoforte (Violino, Alessandro Genesini)

MARIO SAMMARCO, *Baritone*

- 600 Adriana Lecouvreur (Cilea)—Monologo di Michonnet (Ah! stupenda, mirabile)
- 601 Tannhauser (Wagner)—Romanza di Volframo (Oh tu bell astro incantator)

RICCARDO STRACCIARI, *Baritone*

- 625 Aida (Verdi)—Sortita d'Amonasro (Quest'assisa ch'io vesto)
- 626 Lucia di Lammermoor (Donizetti)—Cavatina di Enrico (Cruda, funesta smania)

FRANCISCO VIGNAS, *Tenor*

- 650 Lohengrin (Wagner)—Addio di Lohengrin (Cignofedel)
- 651 L'Africana (Meyerbeer)—Aria di Vasco (O Paradiso)

GIOVANNI ZENATELLO, *Tenor*

- 675 Otello (Verdi)—Morte d'otello (niun mi tema)

CIRCUIT COURT OF THE UNITED STATES,
Eastern District of New York.

In Equity, No.

Victor Talking Machine Company, a corporation
organized and existing under the laws of the State of New
Jersey,

Complainant,

vs.

Winant V. P. Bradley, a citizen, resident and in-
habitant of the Eastern District of New York,

Defendant.

AFFIDAVIT OF FREDERICK A. BLOUNT ON BEHALF OF COMPLAINANT
SUR MOTION FOR PRELIMINARY INJUNCTION.

State of Pennsylvania,)
 : ss:
County of Philadelphia.)

Frederick A. Blount, being duly sworn according to
law, deposes and says as follows:

I am of lawful age, and a resident of the City of
Philadelphia, and State of Pennsylvania. On February 15, 1909,
I visited the premises marked and known as No. 147 West 35th
Street, Borough of Manhattan, City, County and State of New
York, this being the address of the Continental Record Co.,
as stated in the bill rendered by the said Continental Record
Co. to the Edisonia Company, Newark, N. J., dated January 29,

1909, which bill is attached to the affidavit of Albert O. Petit, verified February 15, 1909, and to be used on behalf of the complainant on the motion for Preliminary Injunction about to be made in the above entitled suit.

The said premises, known and marked as No. 147 West 35th Street, Borough of Manhattan, City, County and State of New York, consisted of a building evidently intended for, and suitable for an office. Upon the front windows of the said premises was conspicuously displayed a sign, reading as follows: "Herald Square Storage Co." and beneath that was another sign, in small letters, stating that a daily sale of office fixtures and the like was held at the said premises. Upon the door by which admittance was gained to the building forming a part of the said premises, was a notice on cardboard, written in lead pencil, reading somewhat as follows:- Absent- will return very soon- messages or mail to be deposited in the mail box in the door- Office hours 10-5.

I was unable to gain admittance to these premises, and was also unable to gain a very good view of the interior of the said premises, owing to the dust upon the windows, and their condition of uncleanness. About the only thing which I was able to see by looking through the windows was a desk in one corner of the room.

I observed the said premises very closely, for the purpose of ascertaining if the said Continental Record Co. was conducting business on the said premises, but the only signs, advertisements and the like which I saw on the said premises were those which I have above set forth.

Frederick A. Blount

Subscribed and sworn to this sixteenth day of February,
S. D., 1909.

Alexander P. ...

NOTARY PUBLIC
Commission Expires Feb. 1, 1910
604 STEPHEN GREENWICH
PHILADELPHIA

CIRCUIT COURT OF THE UNITED STATES.

Eastern District of New York.

In Equity No.

Victor Talking Machine Company, a corporation organized and existing under the laws of the State of New Jersey,
Complainant

vs.

Winant V. P. Bradley, a citizen, resident and inhabitant of the Eastern District of New York,
Defendant.

AFFIDAVIT OF JAMES W. OWEN, ON BEHALF OF COMPLAIN-
ANY, SUR MOTION FOR PRELIMINARY IN-
JUNCTION.

State of Pennsylvania,)
 : ss:
County of Philadelphia.)

James W. Owen being duly sworn according to law,
deposes and says as follows:

I am of lawful age, a resident of the City of Philadelphia, State of Pennsylvania, and am one of the chief assistants of the recording laboratory of the Victor Talking Machine Company of Camden, New Jersey, and have been such for several years past.

I have been engaged in experimental and practical recording work in the making of disc talking machine records for use in connection with talking machines of the class known as Gramophones, for a number of years, and have assisted in

supervising the making of many thousands of records and matrices during that period of time, made by the Victor Talking Machine Company.

In the course of my work and experiments I have been called upon a number of times to analytically examine sound records and to compare microscopically as well as accoustically the sound waves recorded thereon, for the purposes of determining various results involved in the recording of the sound on these flat disc records, and have found that the sound waves that are recorded have certain distinctive characteristics which always appear in records made from such matrices.

I have examined complainant's exhibit, defendant's counterfeit record, now offered in evidence and compared the same with complainant's exhibit, complainant's Scotti record, now offered in evidence, and find the former to be clearly "dubbed" or copied from the latter, and that from my examination of the same I am clearly of the opinion that the said defendant's counterfeit record could not have been made in any other way with the air marks and characteristic features thereon, than by "dubbing" complainant's Scotti record. This complainant's exhibit, complainant's Scotti record is one of the flat disc records made and sold by the Victor Talking Machine Company, the complainant herein, and I made the matrix of this record myself from the wax master record upon which the selection was originally recorded. The said matrix being used to press the commercial records such as complainant's exhibit, complainant's Scotti record.

The complainant's exhibit, defendant's counterfeit record there is no doubt in my mind was made by obtaining from

a commercial record of the Victor Talking Machine Company, such as complainant's exhibit, complainant's Scotti record pressed by the matrix which I made, a duplicate counterfeit matrix by depositing upon the said Victor commercial record by some electric current process, copper or other metal to form a matrix, or by what is known as the lead process by pressing lead under hydraulic pressure upon the face of a commercial record in order to get an exact replica or mold in relief, and then making a matrix by the electro-typing process from this lead replica or mold and from such a matrix as either of those mentioned the said complainant's exhibit, defendant's counterfeit record was pressed by pressing the matrix into suitable material, such as the material used by the complainant in its commercial records, which softens when heated and hardens when cool.

I have very carefully compared the complainant's exhibit, complainant's Scotti record with complainant's exhibit defendant's counterfeit record, by listening to the sounds reproduced by each of these records separately as well as by measurements and microscopic examination, and my opinion, as an expert, is that it would be impossible to have produced this complainant's exhibit, defendant's counterfeit record without duplicating the complainant's exhibit, complainant's Scotti record in some such manner as I have described, or in other words it would be an utter impossibility to independently record the sounds recorded in this complainant's exhibit, defendant's counterfeit record and to have it identical in time, tune and all characteristics of vibration and other characteristics which are apparent in recording.

The defendant's counterfeit record is found by me to be identical with the complainant's exhibit complainant's Scotti record in the reproduction on one of the Victor machines. I have listened to each of these records played one after the other, and can find no variation or dissimilarity whatsoever. As to sound, from my experience these selections could not have been independently recorded at separate times, as it would be impossible to record the same selection by the same artist at different times, having all the characteristics and ~~star~~ marks of similarity, as I note in comparing these two by attentively listening to the reproduction of the same.

As to microscopic examination, I would say that I have examined both the counterfeit or dubbed record and the complainant's Scotti record carefully under a high power glass, and I find in each of them exactly the same characteristics and vibrations, as an illustration the 23rd line of the record from the inside from the end of the record there are certain peculiar vibrations which I find identical in the "dubbed" record, with the same vibrations on the same line of the genuine record, which could not have existed in exactly the same location with exactly the same characteristics of vibration had the two records been made or sung independently from the same selection at different times. This applies to all the other lines which I examined, as a further illustration, ~~to~~ the eighth and ninth lines from the end of the record. No two voices make the same vibrations. There are characteristics of vibration in Scotti's voice which are peculiar to himself, and which shows that the said record could not have been sung by anybody but Scotti.

As hereinbefore pointed out, the records could

not have been independently sung even by the same artist, but that it is manifest that the one is a counterfeited or dubbed copy of the other.

While the numbers "81021" and "B876" appear stamped on the face of complainant's exhibit, complainant's Scotti record which do not appear upon the face of complainant's exhibit, defendant's counterfeit record, this is very easily accounted for, as the numbers may be readily erased from the counterfeit matrix when made, by emery when the matrix is revolved for the purpose on a lathe or plate and may be so completely erased as not to appear on the matrix of any of the pressings therefrom. The number "14" reversed which appears on the face of the complainant's exhibit, defendant's counterfeit record is the number placed on the counterfeit matrix by the party who made it manifestly after the other numbers referred to were erased.

I have also carefully examined the following counterfeit records of the defendant, "Complainant's Exhibits, Defendant's Records purchased by the Edisonia Company", viz:-

801, Plancon (Noel) (Holy Night); 975 H. Evan Williams (A Dream); 875, Guiseppe Campanari (Trovatore); 951, Marie Michailowa (Traviata); 800 Plancon (Marta); 900, Johanna Gadski (Walkure); 850, Antonio Scotti (Pagliacci); 825 Emilio de Gogorza (For all Eternity).

I likewise find by similar careful examination of each of these records, that they are in the same manner, dubbed and counterfeited, as the Scotti record from the Victor Talking Machine Company's originals of these high class records. The Victor Talking Machine Company's original records from which these counterfeit records were dubbed, as I find by

careful examination, are as follows:

Catalogue numbers 81,023, Plancon (Noel); 64,078, H. Evans Williams (A Dream); 81,082, Guiseppe Campanari (Trovatore) 61,178, Michailowa (Traviata); 81,086, Plancon (Marta); 87,002, Johanna Galski (Walkure); 81,021, Antonio Scotti (Pagliacci); 64,038, Emilio de Gogorza (For all Eternity).

It is my opinion, as an expert, that it would be impossible to have produced these complainant's exhibits, defendant's records, sold to and purchased by the Edison Company, without duplicating the complainant's corresponding records above noted, by the dubbing process hereinbefore referred to; in other words, it would have been an utter impossibility to independently record the sounds recorded on these said records of the defendant without dubbing or counterfeiting the same by electroplating or other dubbing process hereinbefore referred to.

I would add that the "Complainant's Exhibit, Complainant's Scotti Record" hereinbefore referred to, is catalogued in the Victor Talking Machine Company's catalogue, number 81,021, Pagliacci (Prologue), Antonio Scotti.

James W. Owens

Sworn to and subscribed before me this 16th day of February, 1909.

Alexander Park

NOTARY PUBLIC,
Commission Expires Feb. 6, 1913.
604 STEPHEN BROAD BLVD.
PHILADELPHIA

CIRCUIT COURT OF THE UNITED STATES.

Eastern District of New York.

In Equity No.

Victor Talking Machine Company, a corporation organized and existing under the laws of the State of New Jersey,

Complainant,

vs.

Winant V. P. Bradley, a citizen, resident and inhabitant of the Eastern District of New York,

Defendant.

AFFIDAVIT OF ALBERT C. MIDDLETON, ON BEHALF OF
COMPLAINANT, SUR MOTION FOR PRE-
LIMINARY INJUNCTION.

State of Pennsylvania,)
 : ss:
County of Philadelphia.)

Albert C. Middleton, being duly affirmed according to law, deposes and says as follows:

I am a citizen of the United States, and a resident of Sea Side Park, State of New Jersey. I am the Secretary of the Victor Talking Machine Company, the complainant named herein, which is a corporation duly organized and existing under the laws of the State of New Jersey, and have been Secretary of the said Company since the date of its organization, on or about October 5th, 1901. The said Company is and always has been since its organization engaged in the manufacture and sale of talking machines, talking machine records and accessories, the particular class of machines and records manufactured by it being what has heretofore been commonly known and

classified as the gramophone and gramophone disc records, as distinguished from other type of machines and more particularly known as "Victor" talking machines and records.

The said Victor Talking Machine Company owns and controls a large number of United States patents relating to talking machines and records, among others, the basic Berliner Patent No. 534,543, issued February 19, 1895, under which the Victor Talking Machine Company has always manufactured and still manufactures its talking machines and records, as set forth in the Bill of Complaint, the contents of which I am familiar and the facts therein stated are true, so far as the same are in my knowledge, and as to those stated on information and belief, I believe them to be true.

I have been associated with Eldridge R. Johnson, now President of the Victor Talking Machine Company, in the manufacture of disc sound records and machines for reproducing sound therefrom, since about 1896, and was associated with the said Eldridge R. Johnson prior to the incorporation of the Victor Talking Machine Company, the complainant herein, and was also associated with the said Johnson on October 5, 1901, when the said Victor Talking Machine Company was incorporated under the laws of the State of New Jersey, with its principal office at Camden, New Jersey, at or about which time the said Johnson assigned the exclusive license to manufacture and sell the inventions which he controlled relating to talking machine records and machines for reproducing therefrom, among others the said Berliner patents, which patents the said Johnson had previously acquired from the Berliner Gramophone Company, the exclusive licensee under the said patents to Emile

Berliner, referred to in the said Bill of Complaint. On the same date the said Johnson assigned to the complainant company his entire right, title and interest in and to all his inventions relating to talking machines, talking machine records and accessories, as set forth in the Bill of Complaint, and all his talking machine business, trade-marks, good-will, property, plant etc., relating to the said business.

Subsequent to the latter part of August 1900, when I was associated with the said Johnson, the said Johnson had, under his own name, extensively engaged in the manufacture and sale of talking machines and talking machine records, and accessories, as stated in said Bill of Complaint, and had through the expenditure of large sums of money, expended in developing said records and machines and accessories and in advertising the same, acquired a large and extensive business in the sale of said records, machines and accessories, and at the time of the transfer of the said business in October 1901, to the Victor Talking Machine Company, a large business amounting to many thousands of dollars in sales per month had been created, all of which business and good-will was transferred and assigned to the Victor Talking Machine Company at that time.

The said Victor Talking Machine Company, of which I am secretary, and have been since the fifth day of October 1901, has actively continued in the said business transferred to it by the said Johnson, and has since acquired, through the expenditure of vast sums of money in advertisement and plant, an enormous business,- the largest talking machine business in

thw world. Its plant at Camden, New Jersey covers several acres of ground, and has been established at the cost of several millions of dollars.

The business of the company is confined exclusively to the manufacture and sale of disc talking machine records and machines for reproducing sound therefrom, a large portion of the plant and business being designed and used for the manufacture of flat disc records. The said records and machines are not and cannot be used for any other purpose than in reproducing sound, in accordance with the patents of the company, and said records are sold exclusively for the purpose of reproducing sound by and in conjunction with the complainant's said reproducing machines.

The said machines and records have gone into large and extensive commercial use, not only in the United States, but the said Victor Talking Machine Company has, since its organization, manufactured and still continues to manufacture, in large quantities for sale and use in Europe, Asia, Africa including Australia, and also in South America, in all of which countries said product has become widely and favorably known.

With the exception of a few instances, in which cases suits for infringement are now pending, brought by this complainant, the entire trade of this country has recognized the rights of this complainant in its patents, said patent rights being also recognized by the public in general. Among other licensees of this complainant company is the American Graphophone Company and the Universal Talking Machine Manufacturing Company.

The complainant has spent many hundreds of thousands of dollars in producing its disc sound records, and in bringing them to the highest possible state of perfection, as well as employing talent of the highest order, and has also spent many hundreds of thousands of dollars in advertising said records, and has been to great expense to obtain for the public the highest character of operatic talent.

The complainant's disc sound records are made in different sizes, such as 7 inches in diameter, 10 inches in diameter and 12 inches in diameter, usually about 1/16 of an inch thick, the material being of a dark color, usually black, of hard durable material upon which the record groove is impressed or stamped from a point near the periphery to a point about one and a half inches, or two inches, from the center of the record tablet, in closely disposed spiral lines leaving a smooth centrally disposed disc upon which lettering and marking is applied for designating the title of the record, together with the name of the manufacturer or patentee.

These flat disc records are made by the complainant company, in which operation the performer, either a vocalist, instrumentalist, orchestra or band, as the case may be, sings, recites or plays into a suitable recording instrument, which produces an original sound record or "original", in a tablet of suitable material, and thereafter matrices are obtained from said original sound record in the shape often of an electro plate reverse, from which in turn duplicates, such as complainant's exhibit Scotti record, are obtained by pressing into suitable material, which duplicates are known as commercial records and sold to the trade and public to be used in connection with the complainant's reproducing machine for the purpose

of reproducing sound therefrom.

The Victor Talking Machine Company for large considerations has acquired the use to the exclusive services of various operatic singers and artists, among others domestic and foreign, as well as instrumentalists, orchestras and bands, and a large number of said artists known as "Grand Opera Singers" who rank among the greatest artists in the world. These said artists, such as Caruso, Scotti and others, by contracts have agreed to make talking machine records exclusively for the Victor Talking Machine Company, during the period of the contracts which are still existing, and to sign for and make records for no other talking machine, concern or person whatsoever, and for return of the exclusive rights the said Victor Talking Machine Company is under contract to pay to the said artists, as a consideration of the exclusive nature of the rights above mentioned, large sums of money, not only as a consideration for the making of the different records, but in addition thereto the Victor Talking Machine Company is under contract to pay large sums of money as royalties, among others for instance to the said Scotti, said royalties being based upon the sale of commercial disc sound records or duplicates manufactured by the Victor Talking Machine Company.

The services and qualifications of the said artists, on account of their great natural gifts, special training, long experience and great renown, are special, unique, extraordinary and unreplacable, and the exclusive rights under the said contracts constitute an asset of great value to the complainant.

The quality, value and reputation of the complainant's flat disc records is often due to the music or character and capability of a particular selection, and to the renown of the artist, but also to the skilled experience, methods and processes employed in the complainant's laboratory in making or taking such original recordings, and to the skill, experience, methods and apparatus subsequently employed in obtaining therefrom the original shells or matrices and in pressing commercial records, as well as to the construction and adaptation of the talking machine used in the laboratory for such original recordings, many valuable details and improvements in which have been developed by the complainant and its predecessors in business, during long experience and great expense, and by the skill of those employed in making such original recordings, and to the skill and experience of the high priced experts who supervise and direct the making and taking of the original recordings of such artists, and that such services by such expert are unique, special, extraordinary and unreplacable, and such methods, apparatus and machines, among other things also contain many features in the nature of trade secrets. Many of the high class artists are such as those set forth in paragraph nine of this Bill of Complaint, with whom the Victor Company has exclusive contracts, as far as making records for sound reproduction is concerned, such as Emma Eames, Geraldine Farrar, Johanna Gadschi, Tetrazzini, Caruso, Antonio Scotti, and many others, which contracts are still subsisting, and for which the Victor Company is paying large sums of money to maintain, for the purpose of producing in its records the highest possible talent.

The said sound records produced under the said contracts have become most widely and favorably known throughout this country and abroad as the product of the Victor Talking Machine Company, and enjoy the very highest reputation for special quality, not only as regards the musical character of the recorded sounds but as to durability and lasting qualities, and the Victor Company has expended vast sums of money in making and placing the said records on the market, and have sold large quantities thereof in this and other countries under the said exclusive rights, the value of which to the Victor Company is enormously great.

The Victor Talking Machine Company, as heretofore pointed out, is a corporation organized and existing under the laws of the State of New Jersey, having its principal office in the City of Camden, State of New Jersey, a resident of that state, while the defendant is a citizen and resident of the State of New York, doing business, among other places, in Brooklyn, New York. The value of the subject-matter in controversy exceeds many thousands of dollars, and the damage to the complainant, should the defendant be allowed to continue the manufacture and sale of the said dubbed records counterfeiting complainant's records, and in unfair competition, without the relief prayed for in the Bill of Complaint, would be irreparable, all of which the said defendant is doing and is threatening to continue to do.

About July 1902, the complainant adopted a particular marking and method of dressing its sound records, consisting of a red circular label or disc applied about the center of the dark record discs and within the centrally depressed portion of the record enclosed within the inner marginal lines of the record grooves. This circular label was of bright red color,

being a marked contrast to the disc itself, made a distinct mark for the said disc, and prior to the adoption and use of this trade-mark in the marking of the red label in the center of the record disc of contrasting color, such mark or label had never been used commercially in connection with the manufacture or sale of talking machines or records by any party or concern, and said mark has uniformly become recognized as the trade-mark and label of the Victor Talking Machine Company, and especially in connection with records and that all disc records having a red label or the appearance of a red label are recognized, and believed by the public to be the records of this complainant, the rights to which have been recognized by the public, and in which the public have generally acquiesced. This complainant has spent large sums of money in advertising the said red label records, and has applied the same to its highest grade records, containing records of the most expensive artists and talent, especially the Grand Opera Singers and Artists. These are generally known as the red seal or red label records of the complainant, which gives to the record a dressing and appearance distinctively recognized as the complainant's high class record.

The complainant registered its trade-mark, consisting of a red circular label or disc of contrasting color applied to the center of talking machine records etc., as a trade-mark in the United States Patent Office in Washington, D. C., on July 5, 1904, Certificate No. 42962.

A great public demand has arisen for the complainant's said high grade records, and has been maintained for a number of years past throughout this country and many foreign countries,

especially for the said high grade records, Grand Opera Records and said red seal records, which has been created by the complainant by the superior quality of its goods and the high reputation which it maintains.

By reason of the most extensive advertisement of the complainant at the cost to it of many ^{thousands} ~~hundreds~~ of dollars, the public have been instructed and are apprised of the fact that a large number of the most talented and best known opera singers, such as set forth in paragraph nine of the Bill of Complaint, are under exclusive contract to sing for the complainant, and that when the name of any of these singers appears upon a disc talking machine record it is at once recognized by the trade and public generally and believed to be a Victor record of the complainant company.

The complainant's exhibit, defendant's counterfeit record having the name of Antonio Scotti conspicuously printed thereon, leads the public to believe that the said counterfeit record is a genuine Victor record. Further the fact that the said record has a red label thereon misleads the general public into the belief that the said record is a red label record of the complainant, notwithstanding the fact that a greenish label showing a picture of the American Continent is pasted over a portion of the said red label. This is true also of the other records of the defendant, in evidence, said defendant's counterfeit records being so dressed and prepared and labeled as to mislead the general public into the belief that the said counterfeit records are genuine Victor records, and the sound record thereon having been copied by an electro plating or other dubbing process from the complainant's original records which the complainant has produced at the cost of many thousands

Thy
x thousands
instead of
hundreds.
J.B. W.
J.P.

the word "the"
our
J.S. [unclear]
J.P.

of dollars for each record, is in unfair competition of the complainant's business, and ~~the~~ trade, and designed and intended to divert to the defendant complainant's trade or a large portion of the same and has so done and will continue so to do, unless the same is enjoined by this Honorable Court, as prayed for in the Bill of Complaint.

The complainant is abundantly able to take care of the demand for the said records, and has equipped and established a plant, as hereinbefore set forth, at an enormous expense in the city of Camden, New Jersey, for the purpose.

The said defendant Winant V. P. Bradley and others who are conspiring and confederating with him, whose names are unknown at this time to the complainant, as they are manifestly attempting to conceal their identity at the present time, have been advised and notified and well know the rights of this complainant, but are unjustly and unfairly endeavoring, as they have been endeavoring for some time past and continue to threaten to endeavor to injure or destroy the complainant's said trade for said records by counterfeiting and copying the same and dressing the same so as to mislead the public into the belief that the said counterfeit records are complainant's records, which the defendant and his associates have offered and advertised widely for sale and are continuing so to do to the great and irreparable damage and injury of the complainant. The defendant is able by copying, by the dubbing process, complainant's high class records to produce the same at a very nominal cost, and to put the same upon the market at a price very much less than the price for which the complainant can afford to sell the same, and which the public are willing to

pay for genuine Victor records.

The said defendant and his colleagues are also distributing catalogues and circulars addressed to the talking machine trade generally and to the trade of the Victor Talking Machine Company, offering the said Grand Opera Records, including Scotti and other records, to the public, which are stated in the said circulars and letters and represented to be duplicates of the original record made by the artist, as set forth in the label, complainant's exhibit, defendant's counterfeit record, the statement is made "This record is a duplicate of an original record made by Antonio Scotti, Baritone". Said catalogues of the defendant, which are ready in court to be produced, state among other things, - "These records are all duplicates from original records made by the artists whose names are used" in said catalogues and that they "are equal" to the originals in all respects.

Defendant advertises the said records of the said exclusive artists of the complainant "at prices averaging not more than one-half those charged for the original records" and that experts "are unable to determine between the original and the copy". Specimens of defendant's circulars and catalogues are herewith produced and marked "Complainant's Exhibit A and B respectively".

The complainant will also produce in court numerous of its advertisements of its said Grand Opera records, as an illustration of the character and extent of complainant's advertising. Among other things monthly catalogues are issued by the complainant, including the said Grand Opera records, at enormous expense and throughout the country.

A. S. M. Albert C. Meddleton
Affirmed and subscribed before me this 16th day of
February, 1909.

Frank B. Micalton
NOTARY PUBLIC.
My Commission Expires Dec. 22-1911.

UNITED STATES CIRCUIT COURT

Eastern-District of New York

In Equity No.

Victor Talking Machine Company, a Corporation organized and existing
under the laws and State of New Jersey

Complainant

vs

Winant V.P. Bradley, Citizen, Resident and Inhabitant of the Borough
of Brooklyn, City of New York

Defendant

Affidavit of Mr. Virginus W. Moody on behalf of Complainant, sur motion
for Preliminary Injunction

State of New York)
:
County of New York)

Mr. Virginus W. Moody, being duly sworn according to law,
deposes and says as follows:-

I am of lawful age and reside in the Borough of Manhattan,
City and State of New York. I am acquainted with Winant V.P. Bradley,
whose address is No. 3518 Ave. I, Borough of Brooklyn, City of New York, and
have called at his house for the purpose of finding out the address of the
Continental Record Company, as well as its manufacturing plant. My attention
was first called to the Continental Record Company by a notice which
appeared in a Trade paper, indicating that such a Company was being
incorporated under the laws of the state of New York and giving as
address of said Company the town of New Baltimore, in the State of New York.
For the purpose of finding out if possible where this Company was located, I
went to New Baltimore in the latter part of the year Nineteen Hundred
Eight and made diligent inquiry, and found out that there was no such
concern in that town, nor that any of the persons whose names were given in
this advertisement as incorporators, resided in that town. It was suggested
to me that a Mr. Benjamin I. Carhart, whose name was given as one of the

incorporators, might be located at No. 136 Liberty St., Borough of Manhattan, City of New York, and although this Mr. Carhart was located at this address, no information was found in regard to the said Continental Record Company. There was no such name on the business directory of the building, not in the telephone directory, nor the City directory, nor was any such name on the office door of the Colonial Fan Motor Company at Room No. 629, where Mr. Carhart was located. Ever since that date, and down to the present time, I continued my investigations in an endeavor to locate the office and factory address, or the address of those who were actively engaged in managing and directing the affairs of the said so-called Continental Record Company, and during all these investigations I have failed to find any information in regard to anybody connected with this so called Continental Record Company except the said Winant V.P. Bradley, who represents himself and advertises himself as the Sales Agent of the said Continental Record Company.

I am in charge of the Sales Department of the New York Talking Machine Company, a New York Corporation, whose place of business is No. 83 Chambers St., Borough of Manhattan, City of New York, and ever since I started the investigation before referred to, to locate the Continental Record Company, I have instructed the salesmen of this Company who cover the districts of the City of New York and adjacent territory, to make every effort to find out the location or any other information regarding said Continental Record Company. These salesmen are five in number and they have reported to me that after making careful investigation ever since I gave these instructions, they have been unable to find any address or any information whatever to locate the office or the factory of said Continental Record Company.

In the course of my investigations to locate this Continental Record Company, as before stated, I called at the residence of Mr. Bradley, namely, 3518 Ave. I, Borough of Brooklyn, which is the address given in said Bradley's circulars and catalogues and other advertisements, and saw Mr. Bradley. In the advertising matter circulated by Bradley advertising the talking machine records known as the Continental Grand Opera Records,

said Bradley advertises himself as "Sales Agent" for the said Continental Record Company. The only address which is given for the Continental Record Company in said advertisement is "New York City". Neither myself not any of my salesmen have been able to locate any such firm or Company in the City of New York.

When I saw said Bradley at his residence in Brooklyn, I endeavored to find out from him the address of the office or factory of said Continental Record Company but he would give me no information in regard to said office or factory, but I learned from him that any dealings with the said Continental Record Company would have to be through him. This call was in the latter part of the year 1908 and as before stated, ever since then, not only myself but all my salesmen have continued these investigations but have been unable to find out any further information regarding said Continental Record Company. During the course of my said conversation with said Bradley, he said that he was selling talking machine records that were duplicates of certain talking machine records listed in the catalogue of the Victor Talking Machine Company, and also stated that later on he would be able to furnish duplicates of other selections listed in the catalogue of the Victor Talking Machine Company, such as records made by Caruso, Tetravzini, Melba and Sembrich and other well known artists. The above named I am informed, believe, and therefore state, are now under exclusive contract with the victor Talking Machine Company and make records for the Said Victor Talking Machine Company, exclusively, and for no other Company. During this interview said Bradley offered to sell me duplicates of the Victor Talking Machine Company's famous Red Seal records which are retailed at One dollar for the sum of forty cents, and also offered to sell me duplicates of the victor Talking Machine Company's Red Seal records that retail at Two Dollars for the sum of Sixty Cents, that is to say that these records which he would sell me would be what were called the Continental Grand Opera records purported to be made by the said so called Continental Record Company.

While in said Bradley's residence and waiting for him, I noticed on a table in the room where I was, a number of circulars and catalogues advertising these said records purported to be made by the said

so called Continental Record Company and attached to this affidavit is one of said catalogues which I obtained from him during said visit, same being marked "Complainant's Exhibit, Moody's Defendant's Catalogue"

also one of said circulars which is marked "Complainant's Exhibit, Moody's Defendant's Circular".

Virginia W. Moody

Subscribed and Sworn to
before me this 11th
day of February
Nineteen Hundred, Nine

[Signature]
Notary Public N.Y.C.

3518, Avenue I,
Brooklyn, New York.

To the Talking Machine Trade;
Gentlemen;

In re Grand Opera Disk Records

Continental Label.

I hand you herewith catalog of Continental Disk Records, made in this country from Mother records imported from foreign countries. These records are equal to the very best now on this market in all respects. Prices by artists as follows;

Michailowa, De Gogorza, Journet, and
Blauvelt at-----40¢,. each.

Caruso, Schuman-Heink, Gadske, Abbott,
Plancon, Scotti, Campanari, Neilson, Constantino, Pinkert, Barzio, Mangini-Coletti, Zanatello, Didur, Barrieutos, Sammarco, Bonci, Stracciari, Barrientos, Pacini, Parsi-Pettinella, Vignas, Luppi, Castelleno, Powell, Van Rocy, at-----60¢,. each.

I shall hope to receive your esteemed order.

Yours truly,
WINANT V. P. BRADLEY, Sales Agent.

Continental Record Company,
New York City. U.S.A.

Complainant's Exhibit Moody's Defendant's Circular

Maria Barrientos, Soprano
 Dinorah Meyerbeer Part II, Aria di
 Dinorah "Ombra leggera"
 Fra Diavolo--Auber Cavatina di Zerlina

Mario Sammarco, Baritone
 Tannhauser-Wagner Romanza di Volframo
 "Oh, tu bell' astro incantator"

Alessandro Bonci, Tenor
 Rigoletto Verdi Ballata del Duca
 "Questa o quella"
 L'Africana Meyerbeer Aria di Vasco
 "O Paradiso"

Aida Verdi Romanza di Radames	Stracciari
Lucia di Lammermoor Donizetti	Maria Barrientos
Lucia d' Lammermoor,	Sammarco
Dinorah, Fra Diavolo	Regina Pacini
Tannhauser	Armida Parsi-Pettinella
Ave Maria	Francisco Vignas
Carmen	Antonio Magini-Colletti
Lohengrin	Oreste Luppi
La Danza	Eduardo Castellano
Stabat Mater	Maud Powell, Violinist.
La Tosca, La Boheme	
Melodie Souvenir	
Gluck Drdla	

Carmen, Toreador Song	Anton Van Rooy
Sung in French, Orchestra Accompaniment	Bizet
Les Rameaux, the Palms	
Bolero from Les Vespres	Lillian Blauvelt
Siciliennes Sung in French, Orchertra acmpt.	



Following is a forecast of
 Catalogue, now in press, of
 list of ten inch disc records.

These records are all du-
 cates from original records m-
 by the artists whose names
 used herein. They are eq-
 the originals in all respect
 cluding composition and f

The forthcoming ca-
 will comprise all of the b-
 most popular foreign
 made by the most noted

Continental Re-
FOR DISCOUNTS ADDRESS
New Y
WINANT V. P. BRADLEY
Sales Agent
 3518 Avenue I, Brooklyn, N. Y.

Complainant's Exhibit Moody's Defendant's

Ten Inch Records.

Manon Il sogno (The Dream) Caruso
Massenet

Wiegenlied (Cradle Song) Schumann-Heink
Brahms

Walkure- (Brunnhilde's Battle Cry) Galski
German Wagner

Martha- Qui sola vergin rosa Abbott
(Last Rose of Summer) in Italian Flotow

A Dream- Bartlett Evan Williams

Trovatore--Stride la vampa Louise Homer
(Fierce flames are soaring) Italian Verdi

Marie Michailowa, Soprano

Travita-Addio del passato
(Farewell to the Bright Visions) Verdi

Freischutz--Air Weber

Lucia-Mad Scene Donizetti

Serenade- Gounod

Ave Maria- Gounod

Cradle Song- Napravnik

Pol Plancon, Bass

Noel- (Holy Night) Adam

Marta-Cazone del porter in Italian. Flotow

Antonio Scotti, Baritone

Pagliacci-Prologo (Prologue) Leoncavallo

Giuseppe Campanari, Baritone

Trovatore--Il balen (Her sweet glances) Verdi

Nielsen & Constantino

Traviata-Addio del Passato
(Farewell to the bright visions) Verdi

Emilio De Gogorza, Baritone

Linda Mia- (Spanish Folk Song) Rossini

Regina Pinkert, Soprano

Il Barbiere di Siviglia (Rossini) Part II, Cav-
atina di Rosina (Cabaletta) "Io sono docile"

Soprano and Baritone Duets by

Eugenia Burzio and Antonio

Magini-Coletti

Il Trovatore-(Verdi) Atto IV, Part 1,
Duetto Elenora-Conte ("Qual Voce")

Il Trovatore (Verdi) Atto IV, Part II,
Duetto Elenora-Conte ("Conte ne cessi")

Marcel Journet, Bass

Faust-Le veau d'or (The Calf of Gold) Gounod

Giovanni Zenatello, Tenor

La Travita (Verdi) Aria di Alfredo
(("De miei bollenti spiriti"))

Otello (Verdi) Morte d'Otello
(Niun mi tema)

Pagliacci (Leoncavallo) Cantabile di Canio
(("Un tal gioco, credetelo"))

Adamo Didur, Basso

Faust (Gounod) Strofe di Mefistofele
Dio dell' or

Complainant's Exhibit Moody's Defendant's Catalogue

UNITED STATES CIRCUIT COURT

Eastern district of New York

In Equity No.

Victor Talking Machine Company, a Corporation organized and existing
under the laws and state of New Jersey

Complainant

vs

Winant V.P. Bradley, Citizen, Resident and Inhabitant of the Borough of
Brooklyn, City of New York

Defendant

Affidavit of Mr. George T. Williams on behalf of Complainant, sur motion for
Preliminary Injunction

state of New York)
 : SS
County of New York)

Mr. George T. Williams, being duly sworn according to
law, deposes and says as follows:-

I am of lawful age and Manager of the New York
Talking Machine Company, a New York Corporation located at No. 83
Chambers St., in the Borough of Manhattan, City of New York, and am
a resident of the Borough of Manhattan. As Manager of said Company,
in the latter part of the year Nineteen Hundred Eight, I gave
instructions to salesmen and others connected with said Company to
find, if possible, the address of the office or factory of so called
Continental Record Company. In the advertising matter relative to
the talking machine records offered for sale in this country, the only
address which is given is "New York City", although Winant V.P. Bradley
places his name and address on this advertising matter and holds
himself out as sales agent of said Company, his address being given as
3518 Ave. I, Borough of Brooklyn.

The reports brought to me by all the salesmen who are
investigating to determine the address of the office or factory of said

Continental Record Company, are that they are unable to find any other address in connection with the Continental Record Company except the address of said Bradley.

I have also, myself, investigated in an endeavor to find out the address of the Continental Record Company by talking to a large number of people, dealers and others, connected with the talking machine trade, and no one has been able to give me the address of said Continental Record Company and the only thing I found out in connection with said address is the address of said Bradley. I will state further that not only myself, but Mr. Virginus W. Moody, Manager of the Sales Department of the New York Talking Machine Company, also gave such instructions.

George T. Williams,

Subscribed and sworn to
before me this 13th day
of February, Nineteen Hundred Nine

[Signature]
Notary Public N.Y.

UNITED STATES CIRCUIT COURT

Eastern District of New York

In Equity No.

Victor Talking Machine Company, a Corporation organized and existing under
the Laws and State of New Jersey

Complainant

vs

Winant V.P. Bradley, Citizen, Resident and Inhabitant of the Borough
of Brooklyn, City of New York

Defendant

Affidavit of Mr. Allyn T. Doty on behalf of Complainant, sur motion
for Preliminary Injunction

State of New York)

: SS

County of New York)

Mr. Allyn T. Doty, being duly sworn according to law,
deposes and says as follows:-


I am of lawful age and reside in the Borough of Manhattan,
City and State of New York. I am salesman for the New York Talking
Machine Company, a New York Corporation, located at No. 83 Chambers
St., Borough of Manhattan, City of New York. Since the latter part of
1908, under instructions from Mr. Virginus W. Moody, Manager of the Sales
Department of the New York Talking Machine Company, I have
conducted an investigation to find out the address of the office or factory
of so-called Continental Record Company. The only address of said Continental
Record Co. is New York City. I made diligent inquiry in my daily
work among the different people with whom I have come in contact engaged
in the talking machine trade, in regard to the address of this so called
Continental Record Company and no one knew, as far as I have been
able to learn, any address other than New York City.

Other than this address of New York City, the nearest information
that I have been able to find is that a Mr. Winant V.P. Bradley
holds himself out as Sales Agent of this so called Continental Record Company.

giving his address as No 3518 Ave. I, in the Borough of Brooklyn,

Allyn J. Klotz

Subscribed and sworn to
before me this 13th
day of February
Nineteen Hundred Nine



[Signature]

Notary Public N.Y.C.

UNITED STATES CIRCUIT COURT

Eastern District of New York

In Equity No.

Victor Talking Machine Company, a Corporation organized and existing
under the Laws and State of New Jersey

Complainant

vs

Winant V.P. Bradley, Citizen, Resident and Inhabitant of the Borough of
Brooklyn, City of New York

Defendant

Affadavit of Mr. Chester C. Beekman on behalf of Complainant, sur motion for
Preliminary Injunction

State of New York)
 : SS
County of New York)

Mr. Chester C. Beekman, being duly sworn according to law,
deposes and says as follows:-

I am of lawful age and reside in the Borough of Manhattan,
City and State of New York. I am salesman for the New York Talking Machine
Company, a New York Corporation, located at No. 83 Chambers St., Borough
of Manhattan, City of New York. Since the latter part of 1908, under
instructions from Mr. Virginus W. Moody, Manager of the Sales Department
of the New York Talking Machine Company, I have conducted an investigation
to find out the address of the office or factory of so called Continental
Record Company. The only address of said Continental Record Company is New
York City. I made diligent inquiry in my daily work among the different
people with whom I have come in contact, engaged in the talking machine trade,
in regard to the address of this so called Continental Record Company and
no one knew, as far as I have been able to learn, any address other than New
York City.

Other than this address of New York City, the nearest information
that I have been able to find is that a Mr. Winant V.P. Bradley holds himself
out as Sales Agent of this so called Continental Record Company, giving

his address as No. 3518 Ave I, in the Borough of Brooklyn.

Chester C. Beekman

Subscribed and sworn to
before me this *15th* day
of February, Nineteen Hundred Nine

[Signature]
Notary Public N.Y.C.

UNITED STATES CIRCUIT COURT

Eastern district of New York

In Equity No.

Victor Talking Machine Company, a Corporation organized and existing under
the Laws and State of New Jersey

Complainant

vs

Winant V.P. Bradley, Citizen, Resident and Inhabitant of the Borough of
Brooklyn, City of New York

Defendant

Affidavit of Mr. John J. Cavanaugh on behalf of Complainant, sur motion
for preliminary Injunction

State of New York)

: SS

County of New York)

Mr. John J. Cavanaugh, being duly sworn according to law,
deposes and says as follows:-

I am of lawful age and reside in the Borough of
Brooklyn, City and State of New York. I am salesman for the New York
Talking Machine Company, a New York Corporation, located at No. 83 Chambers
St., Borough of Manhattan, City of New York. Since the latter part of 1908,
under instructions from Mr. Virginus W. Moody, Manager of the Sales
Department of the New York Talking Machine Company, I have conducted an
investigation to find out the address of the office or factory of so called
Continental Record Company. The only address of said Continental Record
Company is New York City. I made diligent inquiry in my daily work among
the different people with whom I have come in contact engaged in the talking
machine trade, in regard to the address of this so called Continental
Record Company and no one knew, as far as I have been able to learn, any
address other than New York City.

Other than this address of New York City, the nearest information
that I have been able to find is that a Mr. Winant V.P. Bradley
holds himself out as Sales Agent of this so called Continental Record Company,

giving his address as No. 3518 Ave. I, in the Borough of Brooklyn.

John J. Cavanaugh

Subscribed and sworn to
before me this 13th
day of February, Nineteen Hundred Nine

[Signature]
Notary Public N.Y.C.

UNITED STATES CIRCUIT COURT

Eastern District of New York

In Equity No.

Victor Talking Machine Company, a Corporation organized and existing
under the laws and state of New Jersey

Complainant

--- vs ---

Winant V.P. Bradley, Citizen, Resident and Inhabitant of the Borough
of Brooklyn, City of New York

Defendant

Affidavit of Mr. Edward G. Evans on behalf of Complainant, sur motion
for preliminary Injunction

State of New York)

: SS

County of New York)

Mr. Edward G. Evans, being duly sworn according to law,
deposes and says as follows:-

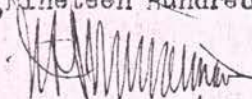
I am of lawful age and reside in the Borough of Manhattan,
City and state of New York. I am salesman for the New York Talking Machine
Company, a New York Corporation, located at No. 83 Chambers St., Borough
of Manhattan, City of New York. Since the latter part of 1908, under
instructions from Mr. Virginus W. Moody, Manager of the Sales Department
of the New York Talking Machine Company, I have conducted an investigation
to find out the address of the office or factory of so called Continental
Record Company. The only address of said Continental Record Company is New
York City. I made diligent inquiry in my daily work among the different
people with whom I have come in contact, engaged in the talking machine trade,
in regard to the address of this so called Continental Record Company and no
one knew, as far as I have been able to learn, any address other than New
York City.

Other than this address of New York City, the nearest information
that I have been able to find is that a Mr. Winant V.P. Bradley holds himself
out as Sales Agent of this so called Continental Record Company,

giving his address as No. 3518 Ave. I, in the Borough of Brooklyn.

Edward G. Evans

Subscribed and sworn to
before me this 13th day
of February, Nineteen Hundred Nine.



Notary Public W. E. C.

UNITED STATES CIRCUIT COURT

Eastern District of New York

In Equity No.

Victor Talking Machine Company, a Corporation organized and existing under
the laws and state of New Jersey

Complainant

vs

Winant V.P. Bradley, Citizen, Resident and Inhabitant of the Borough of
Brooklyn, City of New York

Defendant

Affadavit of Mr. William S. Moffatt on behalf of Complainant, sur motion
for Preliminary Injunction

state of New York)

County of New York)

Mr. William S. Moffatt, being duly sworn according to law,
deposes and says as follows:-

I am of lawful age and reside in the City of Newark, state of New Jersey and am connected with the New York Talking Machine Company, located at No. 83 Chambers St., Borough of Manhattan, City of New York, and since the latter part of Nineteen Hundred Eight I have been endeavoring to locate the address of the office or factory of the Continental Record Company. The only address which I have seen given in the advertising matter is New York City and through various sources and investigators since the latter part of Nineteen Hundred Eight down to the present time, I have been unable to find any address other than the one given.

In all the reports that have come to me I have been able to find out only that Winant V.P. Bradley, giving his address as No. 3518 Ave. I., Brooklyn Borough, is the Sales Agent of the said so called Continental Record Company.

Sworn to before me this
11th day of February
Nineteen Hundred Nine

William S. Moffatt

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Eastern District of New York.

In Equity, No.

VICTOR TALKING MACHINE COMPANY, a corporation organized and existing
under the Laws of the State of New Jersey,

Complainant,

-----against-----

WINANT V. P. BRADLEY, a citizen, resident and inhabitant of the East-
ern District of New York,

Defendant.

STATE OF NEW JERSEY)
 : SS.:
COUNTY OF CAMDEN (

ALBERT C. MIDDLETON, being duly affirmed according to law, deposes and
says:

I am Secretary of the Victor Talking Machine Company and am the Albert
C. Middleton who has previously given an affidavit in this cause on behalf
of complainant on motion for preliminary injunction. I am and have been
since the organization of the Company familiar with the details of the bus-
iness of the Corporation and with its contracts and matters generally inci-
dent to the business.

All matrices of Victor Talking Machine Company's records used by the
Berliner Gramophone Company of Canada in pressing records such as referred
to in the affidavit of Winant V. P. Bradley filed by the defendant in this
case, verified March 2, 1909, are the exclusive property of the Victor Talk-
ing Machine Company, the said Berliner Gramophone Company of Canada merely
having the right to press records from the said matrices belonging to the
Victor Talking Machine Company for sale only in the Dominion of Canada and
in no other place or places, the records pressed therefrom to be used only
for the purpose of reproducing sound therefrom and for no other purpose.

The said Berliner Gramophone Company of Canada pays unto the Victor Talking Machine Company for the privilege of pressing records from said Victor Talking Machine Company's matrices in Canada a certain amount in accordance with the number of records pressed and also pays unto the Victor Talking Machine Company in addition for each record the royalty which the Victor Talking Machine Company may be required to pay to the artist singing or reciting the selection recorded upon the matrix or record.

The singer Antonio Bonci does not sing for the Victor Talking Machine Company and the Victor Talking Machine Company does not produce the records of the said Bonci as alleged in the affidavit of Mr. Bradley.

The complainant Company never brought suit in the Courts of Canada to enjoin the Berliner Gramophone Company of Canada from dubbing records as alleged in the said Bradley affidavit.

The complainant Company has always since about the beginning of the year 1902 licensed its records for sale and use under certain restrictions substantially such as provided upon the complainant's exhibit records in this case.

As to dubbing records I would say that the only aggravated instance of this character to my knowledge is the present counterfeiting by this defendant and the one for which suit was brought against A. T. Armstrong whose records were restrained by Judge Lacombe in the United States Circuit Court of the Southern District of New York.

Albert C. Middleton

Affirmed and subscribed before me this Third day of March, 1909.

Frank B. Middleton

NOTARY PUBLIC.

My Commission Expires Dec. 22-1911.

IN THE CIRCUIT COURT OF THE UNITED STATES.

Eastern District of New York.

In Equity. No.

Victor Talking Machine Company, a corporation
organized and existing under the laws of the State of New
Jersey,

Complainant,

vs.

Winant V. P. Bradley, a citizen, resident and
inhabitant of the Eastern District of New York,

Defendant.

SUB MOTION FOR PRELIMINARY INJUNCTION.

COMPLAINANT'S MEMORANDUM.

The facts as shown by the affidavits in brief, are:

1. That the complainant and its predecessor in
business, have been engaged in the manufacture and sale of
talking machines and talking machine records since about the
year 1895. That the complainant, and its predecessor in
business, have expended large sums of money upon the plant of
complainant, and in acquiring a large and extensive business,
and that to-day complainant has the largest talking machine
business in the country.

2. That a large part of the business of the Victor Talking Machine Company is the manufacture of flat disc records from hard indestructible material, and in the manufacture of the said records, and in order to create a high and established reputation for the selections to be reproduced by the records, the complainant has spent hundreds of thousands of dollars, and in the employment of talent, some of whom are under exclusive contracts to render selections for no one except the Victor Talking Machine Company. That the trade and public generally have recognized the superior excellence and high quality of the selections recorded in the complainant's records and sold by the complainant, and that in connection with those records the Victor Talking Machine Company has employed artists of international reputation, such as James Bessie Albott, Emma Calve', Emma James, Geraldine Ferrar, Johanna Gadski, Louise Homer, Nellie Melba, Adeline Patti, Ernestine Schumann-Heink, Marcella Sembrich, Luisa Tetrazzini, and Signors Carlo Albani, Mario Ancona, Mattia Battistini, Guiseppe Campanari, Enrico Caruso, Charles Dalmores, Emilio de Gogorza, Marcel Journet, Pol Planco, Francescò Tomagno, Antonio Scotti, Herbert Witherspoon, H. Evan Williams, and many others, including Sousa's Band, who are under contracts to perform for the Victor Company, and for it alone.

3. The complainant's records, not only its red seal records, which are the high grade records, but all its records, have become widely and favorably known to the public and trade generally, among other ways, by the wide publication of its catalogues, which contain the names of the selections and the name of the artists, generally, together with the designating number. It has been the practice of the complainant, for several years past, not only to advertise its talent and artists widely in the magazines and other publications, but to publish and circulate widely complete catalogues of all its selections and each month to issue a new supplemental catalogue containing the new records made since the preceding month. Upon examining a record exposed for sale the public and trade generally immediately recognize the complainant's records by comparison of the title with the catalogue, irrespective of the name of the manufacturer, which may be printed upon the label.

By this extensive and most expensive system of advertising, involving hundreds of thousands of dollars, the public and trade generally, upon hearing or seeing a record containing a selection made by the complainant's artists and performers recognize the record as one of the complainant's, but whether the particular record is the genuine record pressed by the

complainant from its own matrices, or whether it is a counterfeit record copied or "dubbed" from one of complainant's records upon the market, it is practically impossible for the average purchaser to know or ascertain.

4. Further, one who has once heard complainant's record, such "Pagliacci" or any other selection, upon hearing one of defendant's copied from complainant's, immediately recognizes it as the same rendition of "Pagliacci", or other selection, which he first heard, and is misled into believing the copy to be the original, or the same as the original, and will purchase defendant's under a misapprehension. The defendant by fraud takes the complainant's trade, or a portion of it.

5. The defendant does not seriously deny, in fact practically admits, that he has "dubbed" or copied the complainant's records as set forth in complainant's affidavits, particularly the affidavit of James W. Owen, by making a matrix through a system of copper plating or electroplating from complainant's commercial records as placed upon the market, by which means an exact reproduction can be made by pressing or stamping the matrix into the material of which the commercial records are composed, while in a softened condition.

In fact, the "dubbed" records themselves, which the complainant has offered in evidence as being records copied from the original records of the Victor Company have on them, a statement that "This record is a duplicate of an original made by Antonio Scotti, Baritone", and we have shown in the affidavits, not only by Signor Scotti himself, that he personally sang the selection, but that there is incontrovertible proof that it was impossible to make defendant's counterfeit record without copying or duplicating from one of the originals

so made by Signor Scotti.

Defendant's catalogues which have been produced in Court state, among other things, that "these records are all duplicates from original records made by the artists whose names are used", and we have shown by the affidavits filed herein, that the artists whose names occur upon the counterfeit records which we have introduced in evidence, are under exclusive contract to sing exclusively for the Victor Talking Machine Company.

6. It is shown by complainant's affidavits, and by defendant's literature, that the defendant has only comparatively recently started in the acts complained of, although they are circularizing the country vigorously, and appear to be building up a business, so that if these counterfeiting acts are allowed to continue until final hearing, it will greatly jeopardize and damage and injure complainant's trade irreparably, and not only that, but will cause irreparable damage by encouraging others who are watching the outcome of this motion for preliminary injunction for "dubbing" and copying complainant's high class records. This pernicious practice should be nipped in its incipency.

7. As shown by the catalogues and by complainant's affidavits, especially those of Moody, Williams, Doty, Beekman, Cavanaugh, Evans and Moffatt, the defendant, Winant V. P. Bradley is the only person which, by diligent search, we have so far been able to locate in connection with the counterfeiting and "dubbing" of these records. The catalogues and literature which have been circulated in connection with the sale of these records contain the name of the Continental Record Company, and the only address that is given is "New York

N. Y.". The defendant Bradley holds himself to be "sales agent" for this Continental Record Company, but will not divulge its whereabouts, nor where the records are being made; in fact, he studiously conceals this information. The Court will see from the affidavits just mentioned, that the complainant has conducted a rigid search and diligent investigation to locate in some manner the office or factory of the Continental Record Company, and that the only information we have been able to find from the literature and from Bradley himself, is that he is the "sales agent" and nothing more. In the bill accompanying the affidavit of A. C. Petit, the Continental Record Company gives an alleged address at 147 West 35th Street, New York City, but as will be seen by the affidavit of Frederick A. Blount, this place is a storage company, and that is no sign or other matter indicating that the Continental Record Company is located at this address.

8. The acts of the defendant which are complained of are, that he, Winant, V. P. Bradley, by conspiring and confederating with others, whose names and addresses he studiously conceals, has secured the genuine high class exclusive records of the Victor Talking Machine Company, made by artists who are under exclusive contract with the Victor Company, and by the process of "dubbing", has made counterfeit matrices, exact duplicates thereof, from which these counterfeit duplicate records have been pressed, and is offering these counterfeit duplicate records of inferior material to the public and trade at prices which are much less than one-half the price of the Victor records, and is thereby deceiving the public and the trade into the belief that they are buying licensed records. The very fact that the defendant Bradley uses such suspicious means to dispose of his records and conceal the whereabouts of the Continental Record Company, is not only suggested, but seems to be conclusive that he knows he is conducting an unlawful business, and is doing everything to cover up his tracks.

THE DEFENDANT'S UNFAIR DEALING.

Complainant contends that in cases of this character it is not required to prove actual deception, though the facts in this case do show that what the defendant is doing constitutes a deception and a fraud, not only upon the complainant, but upon the public.

The defendant's counsel, in effect, admits that what the defendant is doing may be morally wrong, but contends that there is no law to punish him.

We take issue with the defendant upon this proposition most distinctly, and are thankful to say that just such unfair, immoral and pilfering acts are subjects which a court of equity very properly lays hands upon in order to right the wrongs perpetrated by unfair dealing, which, if permitted, especially at this time when corporations, or concerns expend such large amounts of money to supply the public with means of knowledge and amusement, which the public could not, and would not have the benefit of if unscrupulous parties were allowed, at little or no cost, to copy, counterfeit and take the material accumulated at great cost and which can only be provided for the benefit of the public at an enormous expenditure of money.

If, as in this case, this counterfeiting and dubbing should be countenanced and allowed to continue by the court, and the defendant enabled at the expenditure of a few cents, to make copies of what has cost the complainant perhaps \$5000. a record to produce, the result would be that the complainant could not compete with the defendant in supplying records to the public, and, consequently, would have to discontinue engaging high class opera singers for record purposes, as the opera singers must be paid, and demand high prices--- therefore, the complainant would stop making such records, and the public

would be deprived of the benefit of these beautiful opera records at home.

Such unfair and unlawful dealing has been enjoined in the federal courts in a number of cases, among others, we would call your Honor's attention to

STOCK TICKER CASES.

National Telegraph News Co. vs. Western Union Telegraph Co., 119 Fed. Rep., 294.

The principals laid down in this case governing courts of equity are instructive and important, and we submit apply equally to the facts of the case at bar, and the attention of the court is particularly directed to the opinion of the court of appeals of the seventh circuit rendered by Judge Grosscup. In this case the Western Union Telegraph Co. had, at large expense, built up a legitimate business in collecting news and distributing it over its wires to its stock tickers in clubs, offices, hotels, etc., where the press and patrons had an opportunity to inform themselves of the latest valuable information.

The defendant purloined this news accumulated at large expense, by sending someone to one of complainant's tickers to copy it, and then the defendant would distribute it over its own wires to its own customers in the same manner without any expense for the original collection of the news.

The defendant has here defended on the ground that the complainant did not copyright its news and could not do it, and that, therefore, it was without remedy, and that the defendant there, as here, could sit down and laugh at the complainant. But the court said "no", it is just for such cases that courts of equity are constituted. Nor was it necessary that there

should be proven any actual deception in such case. The court said:

"In short, the law being clearly inadequate to that purpose, equity should see to it, that the one who is served, and the one who serves, each gets what the engagement between them calls for; and that neither, to the injury of the other, shall appropriate more."

The defendant claimed that there was no property right, but the court said:

"Property, even as distinguished from property in intellectual production, is not, in its modern sense, confined to that which may be touched by the hand, or seen by the eye. What is called tangible property has come to be, in most great enterprises, but the embodiment, physically, of an underlying life--a life that, in its contribution to success, is immeasurably more effective than the mere physical embodiment. Such, for example, are properties built upon franchises, or grants of government, on good will, or on trade names, and the like. It is needless to say, that to every ingredient of property thus made up --the intangible mind only as well as the tangible, that is, the body of the business--equity extends appropriate protection. Otherwise courts of equity would be unequal to their supposed great purposes; and every day, as business life grows more complicated, such inadequacy would be increasingly felt.

"Nowhere is this recognition by courts of equity of the intangible side of property better exemplified, than in the remedies recently developed against unfair competition in trade."

The court further said:

"Is service like this to be outlawed? Is the enterprise of the great news agencies, or the independent enterprise of the great newspapers, or of the great telegraph and cable lines, to be denied appeal to the courts, against the inroads of the parasite, for no other reason than that the law, fashioned hitherto to fit the relations of authors and the public, cannot be made to fit the relations of the public, and this dissimilar class of servants? Are we to fail our plain duty for mere lack of precedent? We choose, rather, to make precedent --one from which is eliminated, as immaterial, the law grown up around authorship --and we see no better way to start this precedent upon a career, than by affirming the order appealed from."

See also:

Illinois Commission Co. vs. Cleveland Telegraph Co., et al.,
119 Fed. Rep., 301.

Sullivan vs. Postal Telegraph Co., 123 Fed. Rep., 411.

Board of Trade vs. Cella, 145 Fed. Rep., 28.

Board of Trade of Chicago vs. Christy Grain & Stock Co.,
198 U. S., 236:

In the above case, the Supreme Court of the United States affirmed the decisions above set forth, approving the doctrine that a court of equity will enjoin a defendant who, by unfair means is attempting to divert to himself a legitimate business.

The attention of the court is also called to Nashville etc. Ry. Co. vs. McConnell, 82 Fed. Rep., 68.

This latter case is known as the "ticket scalper case," to which the attention of the court is invited.

Attention is also called to the decision of the Tribunal of Commerce of the Department of the Seine, France, hereinafter referred to, in the case of the Columbia Phonograph Co., Ltd. vs. Duval, of March 26, 1903, a copy of which is attached to this brief, and a verification of which will be handed to your Honor on the 4th instant.

THE DEFENDANT'S ACTS ARE IN UNFAIR COMPETITION,

OF A FRAUDULENT AND DECEPTIVE CHARACTER.

1. Defendant copies and counterfeits complainant's expensive opera records made by the complainant's exclusive artists and so marks them-- which selections and artists the world recognizes as the exclusive artists and records of the complainant company-- the public having been advised and informed by complainant's extensive advertising and sales of records that the said selections of the said artists are exclusively the Victor Talking Machine Company's.

2. The fact that the defendant copies, for a few cents by electroplating, what cost complainant probably \$5000. a record, is of itself, evidence of a fraudulent act, and in unfair competition.

3. Defendant marks the counterfeit records, for instance the Scotti record-- "This record is a duplicate of an original record made by Antonio Scotti, Baritone" thereby using language tending to deceive, and thereby practically deceiving the public.

4. Not only is the above marking deceptive, but many records are sold by the playing of the same in the hearing of a would be purchaser, who, having heard the original Victor record, recognizes the counterfeit as the production of the Victor Talking Machine Co., and thereby purchases a counterfeit instead of a genuine Victor record, under a misapprehension.

5. Defendant's circulars, in evidence, are deceptive.

6. That the defendant's acts come squarely within the decisions as unfair competition, and under the circumstances while deception is present in this case, such acts should be enjoined without proof of deception.

7. The defendant Bradley is hiding under the shadow of a so-called Continental Record Co., the officers and offices of which, defendant's counsel, in open court, has refused to disclose-- which is significant in itself of the unfair dealings in which the defendant is engaged.

FURTHER AUTHORITIES.

The doctrine of unfair competition is no new doctrine in this country, nor in fact in England, France or Germany. The more recent cases in this country, which have justly tended to apply the doctrine a little more liberally, have unquestioned authority to substantiate the more recent rulings of the United States Circuit Courts of Appeal, as well as of the lower courts, in the earlier decisions of the Supreme Court of the United States in such cases as Coates vs. Merrick Thread Company, 149 U. S. 562; Lawrence Manufacturing Company vs. Tennessee Manufacturing Company, 138 U. S. 549.

The doctrine of unfair competition and unfair trade may be regarded as finally established in the United States, and as based not only on fraud on the public but on the plaintiff.

RE "DUBBING" OR COUNTERFEITING COMPLAINANT'S RECORDS BY TAKING CASTINGS OR ELECTRO-PLATES THEREFROM.

In the case of Victor Talking Machine Company vs. Armstrong, et al., 132 Fed. Rep. 711, Hon. Judge Lacombe, in granting a motion in that case, in connection with the Red Seal Trade-Mark and certain shop numbers which the defendant had reproduced in certain dubbed records, while he stated that the question of dubbing need not be discussed in that case, as the preliminary injunction was granted on another ground, very clearly states the defendant's unlawful acts, and very clearly shows the wrong and injury to the complainant, and it is submitted that this decision strongly intimates that such unlawful acts in dubbing a record should be the subject of

injunction. The following quotations from that opinion are extremely pertinent in the present case:

"The complainant, besides producing disks recording music produced by performers of ordinary ability, has undertaken to provide a superior grade of record, where the music has been produced by well-known artists. To illustrate, IT HAS, AT VERY LARGE EXPENSE, secured the services of Mme. Calve, of Sig. Campanari, of Sig. Caruso, and of others to sing certain selected pieces before its recording instruments, thus obtaining records of a higher grade, which it offers to the public at a price in excess of that charged for ordinary records."The defendants have taken some of complainant's records--the duplicates sold to the public--and from them have produced matrices, and from these matrices have produced disk records which they offer for sale. THUS THEY SAVE THEMSELVES THE EXPENSE OF SECURING AN EXECUTION OF THE MUSICAL PIECE BY SINGER OR ORCHESTRA."

In the case so decided by Judge Taconbe, the defendant had also appropriated not only the entire red disc or label upon the records, and the same character of sound grooves by dubbing, but also had reproduced the shop number and the catalogue number of the complainant's record, and the decree included all these points.

In the case at bar, the defendant's fraudulent and unlawful act is the dubbing or duplicating of complainant's high-class records, some by these artists under exclusive contract for the Victor Company, although, to further show that the defendant wishes to palm these records off as those of the complainant, and to deceive the public, he does put an annular band of red upon his label. Of all the colors that he could have selected, it is significant that he selected this only to suggest the familiar red seals of the complainant, as on no other record on the market, made by the complainant or its licensees, does the label contain red. However, the important and great wrong and injury which it is the object of this suit to enjoin is the fraudulent dubbing or duplicating

of complainant's sound records.

In the case of the Lawrence Manufacturing Company vs. Tennessee Manufacturing Company, 138 U. S. 549, Chief Justice Fuller, delivering the opinion of the Court, said:

"It seems, however, to be contended that the plaintiff was entitled at least to an injunction upon the principles applicable to cases analogous to trade-marks; that is to say, on the ground of fraud to the public and on the plaintiff, perpetrated by the defendants by intentionally and fraudulently selling its goods as those of the plaintiff. Undoubtedly an unfair and fraudulent competition against the business of the plaintiff--conduct with the intent on the part of the defendant to avail itself of the reputation of the plaintiff to palm off its goods as plaintiff's.--would in a proper case constitute ground for relief."

Chief Justice Fuller in the above case cites with approval the bronze nail case of Putnam Nail Company vs. Bennett, 43 Fed. Rep. 800, and in fact quotes the decision of Mr. Justice Bradley in that case.

Mr. Justice Bradley in Putnam Nail Company vs. Bennett, supra, says:

"Whether this is in itself a good trade-mark or not (a bronzed horseshoe nail), it is a style of goods adopted by the complainants which the defendants have imitated for the purpose of deceiving, and have deceived the public thereby and induced them to buy their goods as the goods of complainant. This is a fraud."

It is not to be assumed, as will probably be contended by the defendant, that the doctrine of unfair competition is applicable only to wrappers of articles of commerce. Certainly such an argument must be fallacious. The thing to be protected in the article. If a manufacturer can copy the castings of a competitor who has an established trade for the same, and make the article itself so like his competitor's article that the public will be deceived, even though he puts his own name upon it, the doctrine of unfair competition would certainly fall far short of its intent and purpose to

prevent a fraud upon the public and upon the plaintiff.

This very question has been recently decided by the United States Circuit Court of Appeals of this Circuit in a decision by his Honor, Judge Lacombe, which appears to be on all fours with the facts in the case at bar. I refer to the case of

THE ENTERPRISE MANUFACTURING COMPANY vs. LANDERS, FRARY & CLARK, 131 Fed. Rep. 240. The decision in the lower court was by Judge Platt, and reported in 124 Fed. Rep. 923. In that case the complainant and its predecessors had for a number of years been engaged in the manufacture and sale of mills for grinding coffee, drugs, etc. of various sizes, adopting therefor a certain characteristic shape, design, color and ornamentation which had become well known to purchasers and associated in their mind with the goods of the complainant. In 1898, or thereabouts, the defendants began to make and offer for sale similar mills. In citing the case, the Court, in an opinion by Judge Lacombe, said, inter alia:

"This is a most aggravated case of unfair trading. Usually in these cases the defendants so dress their goods as to present a number of points of difference on which they rely, when charged with intent to deceive, insisting that, although there may be resemblances, the differences are so great as to preclude any idea that they had sought to produce confusion. Here, on the contrary, they have not only conformed their goods to complainant's in size and general shape, which was to be expected, but also in all minor details of structure, every line and curve being reproduced, and superfluous metal put into the driving wheels to produce a strikingly exact effect, while the goods are so dressed with combination of color, with decorations reproduced so closely simulating the style of lettering and details of ornamentation that, except for the fact that on the one mill is complainant's name and on the other the defendant's, it would be very difficult to tell them apart.

"It is elementary law that when the simulation of well known and distinctive features is so close, the courts will assume that defendants intended the result they accomplished, and will find an intent to appropriate

the trade of their competitor, even though in their instructions to their own selling agents they may caution against oral misrepresentations as to the manufacture of the goods. There is evidence to show that purchasers have been deceived as to the identity of these mills, but in the case of a Chinese copy, such as defendants offer to the public, such proof is hardly needed.

"It is to the defendant's credit that, when confronted with the charge of copying, they have not denied it or asserted that they were trying to differentiate their own products. On the contrary they admit that they 'concluded they could profitably manufacture the same line of hardware and sell it in competition with the Enterprise Company,' and accordingly commenced the manufacture thereof, 'using parts of mills sold by the Enterprise Company as patterns wherever it was convenient or profitable to do so,' with the result that they are now 'making and selling coffee mills, which, in all suitable respects, and especially in their effectiveness in use and attractiveness are the same goods as those made and sold by the Enterprise Company.'

"No doubt with such identity and attractiveness competition with complainant's mills would be much more effective; but the defendants overlooked the fact that a Court of Equity will not allow a man to palm off his goods as those of another, where his misrepresentations are made by word of mouth, or, more subtly, by simulating the officialness of details of appearance by which the consuming public has come to recognize the product of his competitor.

"The decree enjoined the sale of mills of seven sizes which had already been offered for sale, and further enjoined the sale of 'any grinding mills having the characteristic shape, design, color and ornamentation of the grinding mills sold by complainant and referred to by the numbers 0, 1, 2, etc. (giving fifteen numbers (15)).' Although there was no proof of any sale of mills corresponding in size to those numbers, the decree as to them was warranted by the answer which avers that 'The defendant also intends to make other mills which will be substantially the same as other classes of mills made and sold by the Enterprise Company.'

"The decree of the Circuit Court is affirmed with costs."

VALENTOWN MANUFACTURING COMPANY VS. ALDER,

154 Fed. Rep. 37.

This is another case in the Circuit Court of Appeals for this Circuit in which the facts were quite similar to those in the foregoing case of the Enterprise Manufacturing Company vs. Landers, et al., 131 Fed. Rep. 240. The defendant copied with great observance the detail of construction and appearance

of the lock manufactured by the complainant, and the Court said; "We are constrained to believe it was intentionally and deliberately done in order to increase his trade at the expense of the plaintiff's", and the injunction was granted.

In the case of Hires Company vs. Consumers Company, 100 Fed. Rep. 809, the Circuit Court of Appeals for the Seventh Circuit enunciated substantially the same doctrine, where the defendant, a manufacturer of root beer, deliberately and designedly adopted the peculiar form of bottle which had been for a number of years known to the public as exclusively the plaintiff's form of bottle and package of root beer. The defendant also copies the plaintiff's label substantially, though using on the package his own name instead of the plaintiff's. The defendant used the pale green back ground such as in plaintiff's label. The plaintiff's bottle which was copied was cylindrical in form, with high shoulders and short neck. Tin capsules or crown stoppers were used for corks. Judge Jenkins, in delivering the opinion of the Court of Appeals, said, inter alia:

"It is true that no one has a monopoly of form, nor has he a monopoly of color, of the shape of letters, of geographical names or his own name. An action like the present proceeds upon no such ground, but upon the principal that one may not, by means lawful in themselves when devoted to a lawful end, perpetrate a fraud upon the public or infringe the rights of another. The doctrine is not novel in this court. We have held that one may not use his own name to work a wrong (Myer vs. Medicine Company 18 U. S. App. 372; Pillsbury vs. Mills Company, 66 Fed. 841.) Nor geographical names for like purposes (Mills Company vs. Eagle, 86 Fed. 608).

One may not use the color that another has selected as a distinguishing mark of his goods, nor use the same arrangement of letters and of marks when such use is with the design to market his goods as the goods of another and so work a fraud. The principal is well settled in this court and need not be enlarged upon. Here the defendant used a bottle for the different beverages manufactured by him which was distinctive and wholly unlike the form of bottle used by the complainant in marketing its root beer. The defendant, as to root beer

but not as to other beverages, substituted as to the bottle used, one identical with the form of bottle used by the complainant? It is said that this was done so that a bottle might contain two full glasses of the beverage. This excuse is pretentious merely. The bottle could have been enlarged without change of form. It was said at the Bar that this act was a mistake on the part of the defendant. This is a charitable view of the act. But it is, in fact, erroneous. It was not a mistake. The act was deliberate and designed. Its purpose clearly was to adopt the form of package previously adopted by the complainant."

A somewhat similar case is that of the Moxie Nerve Food Company vs. Baumbach et al., 32 Fed. Rep. 205, where the complainant put up its nerve food in a champagne bottle wrapped in a light brown ~~papex~~ wrapper with the words "Moxie Nerve Food" printed prominently thereon. After the complainant had acquired a large sale for its goods the defendants began to manufacture a preparation similar in taste, color and flavor to that of the complainant, and similarly put up in a champagne bottle with a wrapper resembling complainant's, bearing the words "Standard Nerve Food", etc., written across the label. The Court enjoined the defendants from putting on the market any packages or bottle of the style of champagne bottles in use by the complainant, when such bottles contained fluid resembling that manufactured by the complainant, and from using the words "Nerve Food", either alone or with others upon the outside or upon the wrapper of any package containing such a fluid.

(See also Moxie Nerve Food Company vs. Beach et al., 32 Fed. Rep., 248. See also Myers vs. Thaller, 38 Fed. Rep. 607)

In the case of Cook vs. Bernheimer, 73 Fed. Rep. 203, in this court, the complainant acquired a reputation for whiskey bottles of a particular shape. The defendant subse-

quently copied the size and shape of the bottle, though the labels were dissimilar. Judge Lacombe granted the injunction and said:

"The complainant's case rests solely on the form of package which it claims has been so imitated as to make out a case of unfair competition. . . . Despite defendant's denials -- and they only deny intent to deceive the public, not intent to use a form of package just like complainant's -- the Court cannot escape the conviction that they found the square shaped bottle 'convenient and useful' because it was calculated to increase the sale of their goods, and such increase, if increase there be, is due to the circumstance that the purchasers from defendants have a reasonable expectation that the ultimate consumer, deceived by the shape, will mistake the bottle for one of complainant's. This is unfair competition within the authorities and should be restrained."

This case was a motion for preliminary injunction.

The attention of the Court is also directed to the case of Cleveland Stone Company vs. Wallace, 52 Fed. Rep. 451, and cases cited on page 438.

In the case of Hilson vs. Foster, 80 Fed. Rep. 896, Judge Coxe, in rendering the opinion, said, inter alia:

"No man should in this way be permitted to appropriate the fruits of another's industry or impose his goods on the public by inducing it to believe that they are the goods of some one else. If A presents his goods in such a way that a customer who is acquainted with the goods of B, and intends to purchase them, is induced to take the goods of A instead, believing them to be the goods of B, A is guilty of a fraud which deceives the public and injures his competitor. Where the goods of a manufacturer have become popular not only because of their intrinsic worth, but also by reason of the ingenious attractive and persistent manner in which they have been advertised, the good will thus created is entitled to protection. The money invested in advertising is as much a part of the business as if invested in buildings or machinery, and a rival in business has no more right to use the one than the other -- no more right to use the machinery by which the goods are placed on the market than the machinery which originally created it. No one should be permitted to step in at the eleventh hour and appropriate advantages resulting from years of toil on the part of another.

The action is based upon deception, unfairness and fraud, and when these are established the courts should not hesitate to act."

In the case of Dennison Manufacturing Company vs. Compton Manufacturing Company, 94 Fed. Rep. 651, Judge Bradford said, inter alia:

"The gradual but progressive judicial developement of the doctrine of unfair competition in trade has shed lustre on that branch of our juris-prudence as an embodiment to a ~~marked~~ marked degree of the principles of high business morality involving the nicest discrimination between those things which may and those which may not be done in the course of honorable rivalry in business. This doctrine rests on the broad proposition that equity will not permit any one to palm off his goods on the public as those of another."

Attention is also called to the case of Leggett & Myer Tobacco Company vs. Hynes, 20 Fed. Rep. 883, where the defendant copied the shape of complainants' plug tobacco though the tin tag on defendant's was dissimilar in shape from the tin tag upon plaintiffs'. In that case the Court said:

"In looking at the trade-mark to see whether it is so far an imitation of another as to deceive ordinary customers exercising ordinary care when purchasing, we must not look at the device alone, but we must also examine the article upon which it is placed. If there is a resemblance in it to another article bearing the trade-mark that is claimed to have been infringed, and if this resemblance when blended with the appearance of the device has a tendency to deceive the ordinary public into the belief that they are buying the other article, then the very nature of the article becomes potential evidence in the case to show a purpose to deceive Now, while there is no trade-mark in the shape of the plugs of tobacco of complainant, and consequently defendant could make his plugs in any shape he pleased without being guilty of an infringement, yet when he makes his plugs in such a way as to give them the general appearance of complainant's and puts on them a device of such a character and of such shape and appearance as that the customer generally when he sees the shape and appearance of the plug and the device on it will be deceived into the belief that it is complainant's tobacco that he is buying, there is a state of case presented by blending the size, nature and structure and appearance of the plug with the device which would not exist if we view either the plug of tobacco or the device separated."

In the case on Globe-Wernicke Company vs. Brown & Besley, 121 Fed. Rep. 90, which involved the size, shape, form

and general appearance of a letter file as well as a trademark, the Court of Appeals, said, inter alia:

"This particular file (one of many made by appellants) came to be known to the trade not by the word or emblem merely, but by its appearance as a whole, which had been uniformly maintained and in which the word and emblem were but two of very many features Conceding arguendo that appellants had no valid trade-mark in the word "leader", nor in the globe emblem, and that appellee might fairly use any of the elements of appellant's "leader" file in such a way as honestly and efficiently to distinguish his own file from appellants, nevertheless it was unlawful for appellee to copy the ensemble of the "Leader" file, as it did, with the purpose and effect of misleading the public."

Attention is also called to the cases of Draper vs. Skerrett, 116 Fed. Rep. 209; Sawyer vs. Horn, 1 Fed. Rep. 24; Bucks Stove and Range Company vs. Kiechle, 76 Fed. Rep. 758.

It is respectfully submitted that from the facts of the defendant shown in this case, it is clear that the intent of the defendant to defraud both the complainant and the public was present. The question of intent is thoroughly covered by the quotations from the decisions of the courts hereinbefore made.

That the defendant in taking the casting or electric type plate of the complainant's Pagliacci-Scotti records, as well as other records referred to in their catalogues in the affidavit of A. O. Petit, and pressing counterfeit records therefrom and selling the same, as we submit was done, committed acts to defraud both the complainant and the public for unfair and disloyal competition and in unfair trade and should be enjoined in this motion under the decision cited.

In conclusion I would call your Honors attention to a decision of the Tribunal de Commerce du Department de la Seine, of France, in the case of the Columbia Phonograph Company, Ltd., vs. Duval, rendered March 26, 1903,

This same question of unfair competition in copying or duplicating sound records was before the Court in this French case, and the Court, after reviewing the merits of the case, granted the prayers of the complainant and enjoined the defendant. A translation of this decision has been received from a representative in Paris, and is attached hereto.

In this connection I would also call attention to the last paragraph of the affidavit of Paul H. Cromelin, verified Jan. 28, 1909, which has been filed in connection with the motion for preliminary injunction in this court in the case of the Phonograph Ltd., and The Columbia Phonograph Company (General) vs. Winant V. P. Bradley, which motion for preliminary injunction is set for hearing on the same day as the present. Which paragraph reads as follows:

"I am in receipt of a letter dated January 4, 1909, from the European headquarters of my company, informing me that the Appeal Court in Germany has just rendered a decision condemning a record-copying firm under the German laws; specifically that the Kammergericht has rendered the decision in favor of the Gramophone Company against a firm engaged in copying or duplicating its records. My correspondent has promised to obtain and send to me a copy of said decision as soon as he can get the same."

All of which is respectfully submitted.

James Pitt
Of Counsel for complainant.

March 1st 1909.

COLUMBIA PHONOGRAPH CO. LTD. vs. DUVAL.

Translation of Decision of the Tribunal de Commerce
du Department de la Seine, Sitting at Paris, France.

6 Rolls - 4 Me Bureau - 254 Pie - Mte Eee 5363.

March 26, 1903.

Extract of the minutes of the Secretary of the Department of the Seine, sitting at Paris.

The Tribunal of Commerce of the Department of the Seine has rendered the following decision:

Thursday, March 26, 1903.

Between the Company called Columbia Phonograph Company, Ltd., situated at No. 34, Boulevard des Italiens, Paris.

Plaintiff, claiming that the fact that Mr. Duval buys cylinders for the purpose of reproducing them and selling them at a low price, constitutes a dishonest competition; a payment of 25,000 francs as damages and in fine an injunction against the sale of any cylinder representing and reproducing those of the Company.

Represented by Maitre Girard, one of those agreed upon by the Tribunal as having charge of the case, as per duly registered and certified power of attorney.

On one Side.

And Mr. Duval, manufacturer of phonographs and graphophones, residing at No. 8 Faubourg Montmartre, Paris.

Defendant against the conclusions of the above indicated claim.

Represented by Maitre Taupin, one of those agreed upon by the Tribunal as having charge of the case, as per duly registered and certified power of attorney.

On The Other Side.

After having discussed the matter in accordance with the law,

In view of the fact that the Columbia Phonograph Co. represents, that it engages first class artists, to sing, play, or recite in front of these apparatus in order to obtain the original records of vocal or instrumental music or of monologue, which it reproduces afterwards in the most exact manner on blank cylinders by means of special processes which are claimed to be its property.

That in this manner it offers for sale "impressed" cylinders, the sonorous reproduction of which, by means of the phonograph, is claimed to give a veritable artistic impression.

That it explains that that is not the process used by Duval, who merely buys from its store one of its cylinders, which he uses afterwards as a "type" for reproducing the same records by the ordinary process of reproduction, consisting in the use of a double point, one of which being rounded follows the cavities of the original, while the other one, specially cut for the purpose, engraves the same impressions on the surface of the blank cylinder.

That the cylinders thus obtained are offered for sale by Duval at lower prices than its own.

In view of the fact that in reality the facts above indicated, established on the other hand by documents offered at the trial, are not contested by Duval.

That consequently this Tribunal has only to ascertain whether, as is claimed by the plaintiff, the grievances above invoked constitute for it acts of disloyal or illicit competition, the injury which they may have caused to it, and whether they should be stopped, as demanded by the plaintiff.

Considering that if in fact, the moulding and reproduction by electrotypy do not constitute processes of which the

Columbia Phonograph Co. has the monopoly, it is certain that by reason of the special care which it may give to this operation, of the manner in which it executes it, of the artists which it engages for the creation of its originals, the impressed cylinders made by it, possess characteristics relating to the process of manufacture, the advantages of which Duval unduly appropriates, free of cost, by only copying the cylinders which are not sold to him by the Columbia Co. for the use that he makes of them.

That in the first place Duval derives a benefit, without any cost to himself, from the talent of the artist paid by the plaintiff for making the original record.

That, besides, the considerable economy, which he realizes in that manner, allows him to offer on the market at a low price, even if he thinks that it is a good one, cylinders which are strictly identical to those sold by the Columbia Phonograph Co. which are obtained by the latter only at considerable cost.

That under the said conditions, there is no doubt that such acts capable of creating such consequences, if they do not constitute by themselves, by reason of what is going to be said further on, facts of disloyal competition, they are in any case illicit and overstep the limits of permitted competition.

That they should not be tolerated.

Considering nevertheless that none of the circumstances of the case proves that Duval has attempted to create a confusion between his products and those of the Plaintiff, nor even that the said confusion has been produced.

That nothing in the outside appearance of the cylinders sold reveals that intention.

That it does not appear in fine that the Columbia Co. has sustained up to to-day any loss whatsoever from the facts complained of however justly.

That the documents presented by it at the trial on that point are clearly insufficient.

That under the said conditions it is only incumbent on this Tribunal to forbid Duval to offer for sale from to-day on any recorded cylinder reproducing those of the Columbia Phonograph Co. and this under the penalty of 50 francs for each ascertained infraction.

For the said Reasons

The Tribunal Judging in First Resort

Forbids Duval to offer for sale from to-day on any recorded cylinder reproducing those of the Columbia Phonograph Co. and this under the penalty of 50 francs for each ascertained infraction.

It declares that the Columbia Phonograph Co. is not well founded in the rest of its demand.

which it over-rules.

And condemns Duval to pay all the expenses, even the cost of the registration of the present judgment.

The said expenses are charged on the margin of the present decree.

The Tribunal orders that this decree shall be executed according to its form and tenor.

Judged thus in Public audience by the Tribunal, Mr. Dutreih being the Presiding Judge and Messrs. Pettit, Prevost and Delmas, assistant Judges.

At Paris, on the date above mentioned.

In faith of which the present decree has been signed by the presiding Judge and by the Secretary.

Registered at Paris on the 10th of April, 1903, folio 60, case 15. Received 6.25 francs.

Signed Jozeau.

Checked

For true copy, Signed Grattard.

Extract-

Paper 5.40

Rolls 3.60 9.00

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Eastern District of New York.

In Equity, No.

VICTOR TALKING MACHINE COMPANY, a corporation
organized and existing under the laws of the State of
New Jersey,

Complainant,

--against--

WINANT V. P. BRADLEY, a citizen, resident and
inhabitant of the Eastern District of New York.

Defendant.

STATE OF NEW YORK,)
COUNTY OF NEW YORK,) ss.

WINANT V. P. BRADLEY, being duly sworn,
deposes and says:

I am defendant in the above-entitled suit. I
have heretofore made an affidavit in a suit pending in
this Court, brought against me by the Fonotipia Limited,
and another, and beg leave to annex a copy thereof hereto
and make the same a part hereof.

The records sold and advertised by me for sale
in so far as the same appear to be similar to complain-
ant's so-called "red seal" records in the nature of the
selections reproduced, were not made in any way from
said records, as I am informed and verily believe, but

were made from records purchased in the Dominion of Canada. ~~Some such records have been purchased by me~~ personally, while other of said records have been purchased by others in said Dominion and copied for sale.

Said Victor records are to my knowledge, in many instances made from foreign recordings had by foreign corporations, and in at least one instance, that of the singer Antonio Bonci, both the complainant and the Columbia Phonograph Company claim to have exclusive rights in the reproduction of the records from his work, said Columbia Company alleging said recording to have been made in Europe.

Also many numbers alleged by complainant to have been recorded in this country represent the work of artists who never have visited the United States, and as to which of the recordings for complainant have been made in the United States, as alleged in the moving papers, I am not informed and have no means of information, if indeed any have been so made.

That as appears by the exhibits of complainant, certain records bear upon their backs restrictive endorsements, as follows:

"10 - inch AMERICAN VICTROLA RED SEAL RECORD.

"\$2.00

"each.

-- NOTICE. --

\$2.00

each.

"This RECORD which is registered on our books in accordance with the number hereon, is licensed by us for sale and use only when sold to the public at a price not less than

--- TWO DOLLARS EACH ---

"No license is granted to use this record when sold at a less price.

"This record is leased solely for the purpose of producing sound directly from the

and for no other purpose; all other rights under the licensor's patents under which this record is made are expressly reserved in the licensor. Any attempt at copying or counterfeiting this record will be construed as a violation of these conditions. Any sale or use of this record in violation of any of these conditions will be considered as an infringement of our United States Patents Nos. 534,543, dated February 29, 1895, and 548,623, dated October 29, 1895, issued to EMILE BERLINER, and of our other U. S. Patents covering this record, and all parties so selling or using this record, or any copy thereof, contrary to the terms of this license, will be treated as infringers of the said patents, and will render themselves liable to suit.

"This record is only licensed for sale and use when and so long as this label remains upon it, any erasures on or removal of this label will be construed as a violation of this license. A purchase is an acceptance of these conditions. All rights revert to the undersigned in the event of any violation.

"March 1, 1906.

VICTOR TALKING MACHINE CO."

Certain other records bear labels upon their faces as follows:

"Awarded First Prize, Buffalo, St. Louis, and
PORTLAND EXPOSITIONS.

Cut Talking Machine & Dog
His Master's Voice./

"Registered U.S. Pat. Off. Marca Indus-
trial Registration.

"Victrola --Price \$2.00 in U.S.A.-- Record.
English Soprano.

"BELIEVE ME IF ALL THOSE ENDEARING YOUNG CHARMS.
(Moore)

GERALDINE FARRAR.

Accompaniment by Victor Orchestra.
87025.

VICTOR TALKING MACHINE CO.; Camden, N. J.

"This patented record is covered by and made under our U.S. patents, among others No. 534,543, dated Feb. 19, 1895, and No. 548,623, dated October 29, 1895, both issued to EMILE BERLINER; No. 739,318 dated September 22, 1903, No. 778,976 dated January 3, 1905, 896,059 dated August 11, 1908, and is licensed by us for sale and use only when sold at retail at a price not less than

the price marked upon the record and only for the purpose of reproducing sound direct from this record and for no other purpose. This license is good only as long as this label remains on this record, unaltered and undefaced. A purchase is an acceptance of these terms."

"Aug. 25, 1908.

VICTOR TALKING MACHINE CO."

while some records bear both said endorsements.

Until very recently the records of complainant were sold without any restrictive notice whatsoever, except the statement that they were patented, and many such records are now so sold, and many are in the hands of the trade and of the public, having been purchased absolutely and without condition, and the complainant is now engaged in withdrawing many such records by exchange for such as have restrictive endorsements.

Such restrictive endorsements are old and well known in the trade, having been employed and extensively used by the Universal Talking Machine Company as early as the year 1898, such endorsement appearing on "Defendant's Exhibit, Phonophone Record," a copy being hereto annexed. That beside such restrictive endorsements, the records of complainant contain claims of patent rights as above indicated.

In the year 1895, the Berliner Gramophone Company, under Emile Berliner and the United States Gramophone Company, acquired for the United States alone the rights of said Berliner under and in his patents and inventions, and such rights were later acquired by the complainant which is now manufacturing and claiming under the same.

In the same year said Berliner established his business in the Dominion of Canada, being succeeded by the Berliner Gramophone Company, a Canadian corporation.

which ever since that time has enjoyed and now enjoys similar rights in said country to those by the complainant and its said predecessors, enjoyed in this country.

That similar separate and distinct rights have been granted and enjoyed in various European countries under said Berliner patents, similar to the rights enjoyed by said Berliner Company of Canada.

In the earlier practice of the art of sound reproductions by means of disc records, and prior to the securing of decisions establishing the validity of patents as between the complainant and the American Graphophone Company contracting in regard thereto, many persons and corporations reproduced or dubbed records, as is the phrase, from the commercial records of others; as Joseph W. Jones, A. T. Armstrong, Leeds & Catlin, C. B. Repp, United Talking Machine Company, Morris and Benjamin Keen, and others; and that later such dubbing has been carried on by the Columbia Phonograph Company and others.

That said Berliner Company of Canada, long copied or dubbed without permission, the records of the complainant, although the complainant attempted through the Courts of Canada, unsuccessfully to enjoin such practice or secure recognition of its alleged proprietary right in its said recordings, as I am informed and believe.

Whereupon, as I am informed and believe, a contract was entered into whereunder duplicate matrices were agreed to be sent by complainant to said Berliner Company for its use in pressing records in said Dominion, which records it was agreed should be there sold by it absolutely to its customers and the public generally.

I have no means of giving the exact terms of said contract, but that the same has been carried out substantially as above is generally known in both countries in question.

Such records were for a long time so pressed and absolutely sold and many are still so sold and I produce and exhibit herewith such record so purchased by me and marked "Defendants Exhibit, Berliner Canadian Record Unrestricted", with the title of this suit and my initials, the label thereon reading as follows:

"This record is pressed from Victor Talking Machine Company's Matrices.

"Licensed for sale and use in Canada only.

"His Master's Voice."

"Trade Mark Patented, Feb. 24, 1897.
"V I C T O R R E C O R D

--Grand Prize--

"Italian -- Il Sogno -- Tenor.
SILVERMASTER CHAUSSE

3 81031 \$2.00

"BERLINER GRAM-O-PHONE CO., OF CANADA, LTD.
Montreal.

"Awarded First Prize, Buffalo, St. Louis, and
Portland Expositions."

Certain of said records are now sold with endorsements or labels upon the backs thereof as follows:

"NOTICE

"This record is licensed by us for sale and use only, when sold at not less than the price marked on the record, and solely for the purpose of producing sound direct from the record. All parties violating these conditions or otherwise infringing upon our rights, will be subject to suit and damages.

May 1, 1908.

THE BERLINER GRAMOPHONE CO.
of Canada, Ltd."

I produce and exhibit herewith such record so purchased by me and marked "Defendants Exhibit, Berliner

Canadian Record, Restricted", with the title of this suit and my initials.

Long prior to the commencement of this suit the complainant established a plan or course of business and entered into a contract with the American Graphophone Company as set forth in the affidavit hereinbefore referred to as a part hereof, and also and likewise made and entered into certain restrictive trade agreements with all persons to whom it sold any of its wares or machines, said agreements providing that said purchasers should sell the same only at particularly specified prices and should buy similar goods from no other person whatever except under the license of complainant, and prohibiting such customers of complainant from selling to any other person or persons engaged in said business or dealing in similar goods, saving only to such as had entered into contracts with complainant containing like restrictions and restraints upon their trade and commerce.

Such contracts were made by the complainant with various persons classified as "Distributors, Jobbers and Dealers" entitled to varying rights thereunder as provided, and were entered into by and through such persons with the complainant, and with each other, said contracts providing among other things for the exercise and enjoyment of exclusive rights and privileges in the sale of talking machines and talking machine goods by and between complainant and said persons, and by and between said persons so contracting among themselves, and it was stipulated and agreed that the persons so enjoying such privileges should be exclusively those so contracting and of whom the complainant herein should issue lists

from time to time, said complainant being given absolute power to suspend at its pleasure the rights of any such contracting party under said contract, whereupon others should be and become prohibited from dealing with the one so suspended. All of which has been carried out and lists issued embracing and cutting out persons so contracting or suspended from time to time.

All or nearly all of such contracts have been so drawn that they are executed and exist between complainant and various of said Distributors, Jobbers and Dealers severally embraced in a single contract and in series of contracts, and all of the same constitute a single agreement as to each series, and the various serieses together constitute a single agreement embracing and fixing the rights with complainant and among themselves of all of the parties to any of said contracts and to every party to any thereof.

Pursuant to such contracts the complainant has from time to time issued lists of persons with whom its said customers might trade, and has issued circulars calling the attention of its customers to said restrictive contracts and has sent the same into the various states and territories of the United States to the various persons with whom the complainant has entered into said contracts in the various states and territories of the United States in which the said customers are and have been doing business, and it has been engaged in commerce and business, the same existing and being carried on among and between the several states and territories and throughout the United States and in all the States thereof.

Said contracts, circulars, agreements and course of business so carried on by complainant constitute a conspiracy and combination in restraint of trade and of commerce and an unlawful restraint and monopoly, and relates to, affects and is carried out in and about and in the control of interstate commerce among the states and was intended so to be, and affects, applies to and controls such trade in articles which are unpatented and are open and free to the public outside of any and all patent rights and privileges whatsoever, and was intended so to do, and constitutes an agreement or combination among and between the various parties to said agreements to such effect, and was intended so to do.

I annex hereto a copy of one of said contracts marked "Defendant's Exhibit, Complainant's Contract" and make the same a part of this affidavit, and likewise a copy of a letter marked "Defendant's Exhibit, Complainant's Letter, No. 1", "Defendants's Exhibit, Complainant's Letter, No. 2", and "Defendant's Exhibit, Complainant's Letter, No. 3", and beg leave to annex an additional circular of complainant, marked "Defendant's Exhibit, Complainant's Circular," in case I am able to replace a copy of the same, placed in the hands of my solicitor and which cannot be found.

That the making of said agreements as aforesaid and the understandings and contracts had in relation thereto and in carrying out the same, are contrary to public policy, illegal and void, and contrary to the Act of Congress passed July 2, 1890, ^{and} to the Statutes of the United States in such case made and provided, and that the acts and proceedings of the complainant and those with it so contracting in the issuing of said circulars

and the carrying forward of said business, and in all of the matters and things aforesaid, and in the bringing of this suit in this Court and in seeking to prevent this defendant from duplicating and selling duplicates of said records so copied, are had and carried out as parts of said illegal combination and in aid of said monopoly, and to enable the complainant and its said dealers to maintain the same throughout the United States of America contrary to said Statutes, and to the loss and damage of the People of the United States and of the defendant, and the restraint of such trade and commerce.

And the complainant, so claiming and seeking to enforce a monopoly by means of such course of dealing, also and in certain respects, as will appear by its labels upon its exhibits herein and circulars; claims to the public, and to this Court, to have and enjoy a legal monopoly under the Patent Laws of the United States wholly independently of said agreement in restraint of trade, and also and likewise by means of a limited or restricted sale or lease of its said records, to prevent the copying thereof as alleged to be done in the case of those sold by the defendant, by reason of which claims complainant as it now appears before this Court, showing and asserting the truth thereof, must admit itself to be fully and amply protected under the rules and principles established and adjudicated by the Courts of the United States and without seeking unusual and unprecedented aid from this Court.

In the case of one of complainant's records alleged to have been made by it under an exclusive contract, namely 6 records made by Madame Tetrazzini, deponent has known said record for many years. The same was recorded by one George E. Cheney for the Universal Talking Machine

Company and long sold by that Company without restriction.

And farther deponent saith not.

Sworn to before me this

2^d day of March, 1909.

Frank Cochrane

Notary Public (67)
New York County.

Wm. V. C. Bradley

DEFENDANT'S EXHIBIT, ZONOPHONE RECORD.

Copy of Endorsement.

"UNIVERSAL TALKING MACHINE CO.

All rights reserved.

CONDITION OF LEASE.

"This record is leased upon the express condition that it shall not be copied or duplicated, and that the full right of property and possession immediately reverts to the UNIVERSAL TALKING MACHINE COMPANY upon violation of the above contract."

DEFENDANT'S EXHIBIT

COMPLAINANT'S CONTRACT.

DEALERS' CONTRACT. List prices, Net prices, and discounts, terms and conditions of sale.

Agreement for the U. S. of America.

In force between the Dealers of Victor Machines, Records, Horns and Accessories and the Victor Talking Machine Company of Camden, N. J.
(Subject to change and revision on notice from the Victor T. M. Co.)

Issued by Grinnell Bros. 219 Woodward Ave, Detroit, M.

(It will be particularly noticed, that all Victor T. M. Records, horns, sound boxes and accessories are covered by letters patent owned and controlled by the V. T. M. and are licensed for sale and for use only under the conditions attached to the goods; and any sale or use of any of the goods in violation of any of the condition except as to modified price to the Public on records, as herein provided, will be an infringement of the patents of the Company. It is distinctly understood, that nothing contained in this contract shall in any way otherwise affect the character of the conditions of the limited license, under which said goods are sold, as noted on the label attached to the goods, and that this contract is not intended to and does not take the place of the license attached to the goods, directly or indirectly.)

MACHINES.				LIST PRICES COST TO DEALERS.	
Victor	1st, with regular equipment			27.-	15.20
"	2nd, " " "	"	"	30.-	18.-
"	3rd, " " "	"	"	40.-	24.-
"	4th, " " "	"	"	50.-	30.-
"	5th, " " "	"	"	60.-	36.-
"	" 3", " " "	"	"	100.-	60.-
"	Monarch, JT	"	"	17.-	10.20
"	" " " "	"	"	25.-	15.-
"	" Special	"	"	45.-	27.-

H O R N S.

"B"	1.50	- .50
"C"	2.-	1.20
"D"	3.-	1.80
"E"	2.-	1.20
"G"	3.-	1.80
"H"	3.-	1.80
"I"	4.-	2.40
"J"	5.-	3.-
"K"	7.-	4.20
"L"	8.50	5.10
"M"	15.-	9.-
"N"	15.-	9.-
New		
" Mahogany style V1		
No. 19 Victor Flower Horn	19" Bell	4.- 2.40
" 22 " " "	22" "	5.- 3.-
" 24 " " "	24" "	7.- 4.20

RECORDS.

Cash Prices

List-prices Cost to Dealers.

7" Domestic	2	-.35	-.21
8" "		-.35	-.21
10" "		-.50	-.40
12" "		1.00	-.66 2/3
7" Foreign, black label		-.50	-.30
10" " " "		1.00	-.60
12" " " "		1.50	-.90
10" " "Victrola" Red Seal		2.50	1.50
10" American Red Seal		1.00	-.60
12" " " "		1.50	-.90
10" " "Victrola" Red Seal		2.-	1.20
12" " " " " "		3.-	1.80
10" "Tanagno" " " "		5.-	3.50
10" "Melba" " " "		3.-	2.10
12" " " " " " "		5.-	3.50
12" "Patti" " " "		5.-	3.50

NEEDLES.

LIST PRICES

COST TO DEALERS

Per 100	-.06	per 1000	-.60	per 1000	-.35
Parts and accessories: For prices on Victor Machine Co's Carrying cases, repair parts and miscellaneous supplies, see our current catalogs, Regular Dealers' discount applies					

TERMS: Net 30 days, 2% 10 days. Delivery f.o.b. City, In which distributor is located.

Any dealer desiring to handle Victor Talking Machines records and supplies, and not having previously enjoyed Dealers' discounts on Victor goods, must qualify as a dealer by purchasing at least three Victor machines, of different styles, and one hundred Victor records. In addition the dealer must have an established place of business, suitable to display our goods, and at all times keep on hand sufficient stock for exhibition and sale purposes.

CONDITIONS OF SALE.

All Victor Talking machines, records, sound-boxes horns, parts and miscellaneous supplies are sold at the company's factory in Camden, N. J., under patents owned and controlled by the V. T. M. Co., as hereinbefore noted, under a restricted license, under the conditions set forth on the labels attached to the goods, and all sales to dealers and consumers of said patented goods are subject also to conditions noted in this Dealers' contract. The right to the sale and use of said goods is dependent upon the observance of the vendee of all the said conditions. Among numerous other U. S. Patents owned or controlled by the V. Co., under which the said goods are manufactured and sold, are: No. 1,34,543, issued Feb. 19, 1895, for Gramophone; and No. 548,625, issued Oct. 29th 1895, for Sound-record, to Emile Berliner and No. 814,786 and No. 814,848, issued March 13, 1906, to E. R. Johnson. The numbers and dates of other U. S. Patents will be furnished on request. The conditions of this contract are as follows:

Premiums &
Trading
Stamps.

1. Dealers must not sell or offer for sale, at retail directly or indirectly, any Victor talking machines records or supplies therefor, at less than the licensed retail price. Neither shall any of the regular factory product, as illustrated in the regular catalog of the V. T. M. Co., be given away as premiums, nor shall any other merchandise, trading stamps, negotiable paper or other inducements, be offered with them, as an incentive to promote their sale.

Shop Worn
Second-
Hand
Records.

2. No license or permission is granted for the sale of shop-worn, damaged or second-hand Victor Talking Machines records or supplies at reduced prices and will not be allowed. If, however, the dealer wishes to sell a legitimate second-hand or out-of-date, old style Victor Machine and will inform the factory in writing of that intention, together with the serial number of the machine in question, and this number proves the machine to have been sold by the factory a year previously, then a special license, in writing, will be issued by the V. T. M. Co., to that dealer, permitting the sale at a reduced price, if the necessary facts are established to the satisfaction of the V. T. M. Co.. A new notice or label bearing the serial number and conditions will then go forward with the permit, which must be affixed to the bottom of the machine, showing at the time of sale, that his machine is second-hand and is licensed to be sold at a reduced price. It is distinctly understood, however, that no such second-hand or out-of-date, or old style machine shall be sold, until all of the provisions are complied with, and until the said new notice or label shall be properly attached to the machine.

Labels.

3. The labels and plates of Victor Talking Machines and Records must not be removed or defaced. The selling of machines and records with these labels, removed or defaced, will constitute an infringement of patents, under which the machines, records, horns, sound-boxes etc., are sold.

Loans or
Purchases
between
Dealers.

4. Authorized dealers are at liberty to borrow Victor goods from another authorized dealer, if mutually agreeable; but each time, the goods are borrowed, must be replaced by ~~the~~ goods of ~~the~~ same make and style. If an outright sale is to be made from one dealer to another it must be at list-prices, and in no case shall the same be at dealer's cost.

Export
Prohibited.

5. To substantially uphold and maintain certain important agreements made with foreign countries, the discount quoted to dealers applies only to the sale of Victor Talking Machines, records and supplies to users in the U. S. of America. Our dealers must exert all due caution to guard against evasion of this clause. A violation of this clause will constitute a good and sufficient ground for forfeiture of this agreement at the election of the Victor Co.

Absolute
Good
Faith.

6. Dealers must co-operate in absolute good faith with the V. T. M. Co., and inform them direct of any person or persons, either in their locality, or at a distance, who, not being entitled to them, are enjoying our discounts. Also must they inform us direct of any other dealer, who is not living up to the contract-system. The above co-operation for our mutual good is imperative.

Breach
of
Contract.

7: All Victor Talking Machines, records, horns, sound-boxes and supplies, as before stated, are covered by U. S. Patents owned and controlled by the V. T. M. Co. and are sold subject to the foregoing mentioned conditions. Upon the breach of any of these conditions, the license to sell or use said Victor Talking Machines, records, sound-boxes, horns and supplies shall cease and terminate immediately, without notice, and the vendee or user of ~~said~~ same becomes at once an infringer of said patents and may be proceeded against for infringement of any of the said patents and for injunction or damages, etc., or both. No variation of these terms and conditions authorized by any employee of the V. T. M. Co., will be valid, unless first ratified in writing by its President or Secretary.

Validity
of
Patents
Admitted

8: The validity of the patents of the V. T. M. Co. under which the said goods are manufactured or sold, is hereby expressly admitted, upon the acceptance of the terms of this contract and it is distinctly and expressly understood and provided, that the party accepting the terms of this contract, will not, in the event of the breach of the contract, or any termination of the contract, thereafter, contest the validity of any of said patents of the V. T. M. Co., under which the said goods shall have been manufactured or sold.

Method
of
Terminating
Contract

9: The V. T. M. Co shall have the right, and reserves unto itself the right to terminate this contract at any time for cause, or otherwise notice of the termination of said contract to be forwarded by mail in writing by the V. T. M. Co to the last known address of the party or parties accepting this contract; the said termination and annulment of said contract to take effect at once. It is distinctly and stated and agreed, however, that any such termination of this contract shall not relieve the dealer or party operating under this contract, from any liability to the V. T. M. Co., which occurred or accrued during the existence of the contract/

Liquidated
Damages
for
Violation

10: In the event of any termination of this contract by reason of the breach of any of the conditions by the party accepting the contract, damages for the same shall be at the election of the V. T. M. Co be estimated at Fifty (50) Dollars, which the party accepting the contract, hereby covenants and agrees to pay as liquidated damages; the V. T. M. Co., may, however, if it so elects and can so establish prove actual damages to a greater amount, and be entitled to recover the same.

VOIDS
any
Previous
Agreement

11. It is understood, that this agreement is to take the place of any prior existing agreement between the parties bearing upon the subject matter as covered in, or provided by, this agreement.

12. It is expressly understood, that in the event of any breach of any of the terms or conditions of this agreement by the party accepting the same, the V. T. M. Co in addition to its other rights, may place and publish the name of said party upon its suspended list.

This agreement is personal to the party accepting the same, and is not transferrable or assignable.
Camden, N. J. Victor Talking Machine Company .

DEALERS' AGREEMENT -- ACCEPTANCE.

In consideration of the right to purchase Victor Talking Machines, parts thereof, records, sound-boxes, horns and supplies from the V. T. M. Co., or their authorized distributors, at the regular dealers' discount provided in the foregoing agreement, for the purpose of vending, in the U. S. of America only, we hereby accept all the terms and conditions provided in the foregoing, and covenant and agree to faithfully perform all of said conditions and terms, and to observe the said list-prices, discounts and terms as well as other prices and terms, that may be established from time to time by the V. T. M. Co., upon such patterns, sizes or styles of their ware, and may be introduced and marketed by them, and to conform to and adhere strictly to and be governed by the same; the right of the V. T. M. Co. at any time and all times to establish or change any such new prices on all its manufactures in the hands of dealers and distributors, as well as on those thereafter to be manufactured or sold by it, being hereby admitted. It is distinctly understood, that this agreement grant no exclusive agency or territory, to the undersigned, and that any violation of any of the conditions or terms, mentioned in the foregoing clauses justify the V. T. M. Co., among other things, to at once cut off the supply of goods and place the undersigned upon the suspended list.

Dated July 24th, 1906.

Victor Talking-Machine Company

ELDRIDGE R. JOHNSON
President
LEON F. DOUGLASS
Vice President
CHARLES K. HADDON
Treasurer
A. C. MIDDLETON
Secretary
LOUIS F. GEISSLER
Genl. Manager
HORACE PETTIT
Genl. Counsel



GRAND PRIZE
HIGHEST AWARD
ST. LOUIS EXPOSITION
BUFFALO EXPOSITION
PORTLAND EXPOSITION

CABLE ADDRESS
SOUNDOK

CAMDEN, N. J. U.S.A. Sept. 24, 1906

*Defendant exhibit
COMPLAINANTS LETTER No 1
H.V.P.B.*

Dear Sir:-

The firm having the exclusive sale of Victor goods in India, writes to us that the James Manufacturing Co., of Bombay, are importing Victor Talking Machines and Records into India and that their agents in New York are Dadabhoy & Co. We give you this information so that you can look out for orders for Victor goods emanating from these people.

Please use special care so that none of these Machines which reach Indian or other foreign markets can be traced back to you.

Yours very truly,

VICTOR TALKING MACHINE CO.

T DEPARTMENT,

Victor Talking-Machine Company

DIRECTORS
ELDRIDGE R. JOHNSON
PRESIDENT
LEON F. DOUGLASS
CHAIRMAN B'D DIRECTORS
LOUIS F. GEISSLER
GEN'L MANAGER
CHARLES K. HADDON
VICE-PRES & TREAS.
ALBERT C. MIDDLETON
SECRETARY
ALBERT W. ATKINSON
ASS'T SECRETARY
THOMAS S. PARVIN

Defendants Exhibit #2
Complainant's letter



CABLE ADDRESS
SOUNDOX
GRAND PRIZE
HIGHEST AWARD
ST. LOUIS EXPOSITION
BUFFALO EXPOSITION
PORTLAND EXPOSITION

HORACE PETTIT
GEN'L COUNSEL

CAMDEN, N.J. U.S.A. Oct. 22, 1908.

(COPY OF THE NOTICE SENT TO ALL VICTOR DISTRIBUTORS)

It is our sincere desire to properly limit the number of Victor Dealers throughout America--to limit them to the end that Victor goods may receive a more powerful, and enthusiastic representation than ever before.

We wish our present line of Victor Dealers encouraged; we desire new Victor Dealers only in Cities and Towns wherein our interests are not properly taken care of at the present time.

We propose to limit the indiscriminate placing of Victor Dealers so that those now handling our product may never be in fear of some poor representation being placed with some very weak merchant, a barber shop or other undesirable person; hence the following ruling will go into effect on and after this date, viz.:

NEW RULING.

OUR DISTRIBUTORS MUST IN EVERY CASE WHEN QUALIFYING A NEW DEALER, AND, BEFORE SHIPMENT OF THE GOODS, SUBMIT TO US HIS CONTRACTS, SIGNED IN TRIPPLICATE, TOGETHER WITH STATEMENT OF THE AMOUNT OF HIS INITIAL ORDER. THE DISTRIBUTOR WILL THEN AWAIT AUTHORITY FROM THIS COMPANY TO QUALIFY THE DEALER, WHICH WILL BE PROMPTLY FORTHCOMING IF DESIRABLE, AND THE CONTRACTS AT THAT TIME WILL BE RETURNED; ONE COPY TO THE DISTRIBUTOR, AND ONE DIRECT TO THE DEALER ACCOMPANIED BY HIS IDENTIFICATION CARD.

Full information is tabulated in our offices regarding the status of the Victor representation in each Town, and our judgment as to the desirability of qualifying new Dealers must be accepted as final.

The above ruling should in no instance cause a delay in shipment of more than a week. Telegraphic authority may be had upon request, and to a Dealer who has delayed putting in the Victor line all these years, this slight final delay can be of no great moment.

Any failure to comply with the above request will be construed as a violation of our contractual relations.

Very truly yours,

VICTOR TALKING MACHINE COMPANY

Per

Louis F. Geissler

General Manager

Victor Talking-Machine Company

*Defendants Exhibit
Complaints Letter #3*

DIRECTORS
ELDRIDGE R. JOHNSON
President
LEON F. DOUGLASS
Chairman Bd Directors
LOUIS F. GEISSLER
Gen'l Manager
CHARLES K. HADDON
Vice Pres. & Treas.
ALBERT C. MIDDLETON
Secretary
ALBERT W. ATKINSON
Asst Secretary
THOMAS S. PARVIN



HIS MASTER'S VOICE
Reg. U.S. Pat. Off.

CABLE ADDRESS
SOUNDOK
GRAND PRIZE
HIGHEST AWARD
ST. LOUIS EXPOSITION
BUFFALO EXPOSITION
PORTLAND EXPOSITION
HORACE PETTIT
Gen'l Counsel

CAMDEN, N. J. U.S.A. Nov. 25, 1908

TO ALL VICTOR DISTRIBUTORS AND DEALERS --- WARNING

Dear Sir:--

We have noticed certain advertisements and circulars recently put out by the Continental Record Company, of New York City, N. Y., or by Winant V. P. Bradley, of Brooklyn, N. Y., in which they offer to sell certain disc sound records to the trade and public generally, noted in their list or catalogue which records it is stated are "made in this country from Mother Records imported from foreign countries." One of the circulars which we have seen states, among other things:

"In re Continental Grand Opera Records (Discs only)

I beg to enclose you advance list of high class Grand Opera records, by prominent artists of the world-wide fame at prices averaging not more than half those now charged for the original records. The records themselves are pressed up on the very highest class of material finished equal to the original. The character of the record itself is identical with the original record and experts who have listened to my samples are unable to determine between the original and the copy."

The circular also states that an additional number of 150 of the most popular records now in existence will be ready by the time a reply is received to the letter. It also states that "These records are made in this country from Mothers imported from foreign countries." This letter is dated November 1, 1908, apparently circulated in the trade over the name of Winant V. P. Bradley, Sales Agent.

It is hardly necessary for us to advise you that these records are, as we are advised, infringements of our patents, particularly the adjudicated Berliner Patent, No. 534,543, dated February 19, 1895, and our recent Johnson Patent, No. 896,059, dated August 11, 1908; and further, that these records are, from the list submitted, and from the statement made as to many of them, apparently "dubbed" or copied from our own high class opera records, such for instance, as the Caruso selections, and of other like talent who sing exclusively for the Victor Talking Machine Company.

This of course we regard as a gross infringement not only of our patent rights, but a violation of all the well settled principles of fair dealing, and constitutes unquestionably unfair competition, which doubtless the courts will suppress as soon as suit is brought.

It is, therefore, our intention, if this ~~infringement~~ is not promptly discontinued, to institute the necessary legal proceedings, and it is unnecessary for us to suggest to you that all these goods so advertised will in our judgment be liable to injunction, and render, not only the manufacturer, but the dealer and purchaser liable.

We feel convinced of your desire to encourage only fair dealing, and not to handle infringing goods, and trust that our confidence is not mistaken.

Very truly yours,

VICTOR TALKING MACHINE COMPANY

Louis F. Geissler

General Manager.

Victor Talking-Machine Company

DIRECTORS

ELDRIDGE R. JOHNSON
President
LEON F. DOUGLASS
Chairman Bd Directors
LOUIS F. GEISSLER
Gen'l Manager
CHARLES K. HADDON
Vice Pres & Treas.
ALBERT C. MIDDLETON
Secretary
ALBERT W. ATKINSON
Asst Secretary
THOMAS S. PARVIN



CABLE ADDRESS.
SOUNDOX.

GRAND PRIZE
HIGHEST AWARD
ST. LOUIS EXPOSITION
BUFFALO EXPOSITION
PORTLAND EXPOSITION

HORACE PETTIT
Gen'l Counsel

CAMDEN, N. J. U.S.A. Oct. 15th, 1908.

Gentlemen;--

The enclosed announcement is issued to our Distributors - not in the nature of a statement of a new attitude that we have taken towards Distributors, as this has been our position in the matter almost since the inception of the Victor Talking Machine Co. - but rather to reinform such Distributors as may have forgotten our conditions, most all of whom have simply been notified verbally of these conditions at the time they were made a Distributor.

We believe furthermore, that the notice is practically unnecessary, as few, if any, of our Distributors are handling any other disk goods at present, and such as have in the past taken them up through a misconception of our attitude, have cheerfully relinquished them upon request.

However, in order that a perfectly plain understanding may now be had, we wish you to take careful note of the issuance of the enclosed mandate.

We wish to be justified in your eyes in this attitude, and have no doubt but that the statements made by us here will fully justify our position.

Unprecedented sums of money - millions - have been expended in acquiring patents, developing same, building up an adequate plant, and advertising this article so liberally and broadly as to create a demand, from which we are all reaping reasonable results.

Trading and preying upon the popularity of our wares, piratical manufacturers and interlopers have come into the market, with very inferior imitations, as well as

a miserable catalog of selections, the very stocking of which by Jobbers and Dealers has resulted, and will continue to result, in much damage to this Company as well as to cause discouragement and disgust on the part of most of the Dealers who may stock them, on account of their unsalability, and which, if permitted to continue, will prove a serious menace to the industry in general.

It is, of course, a serious temptation to a Dealer to have goods - no matter how inferior - offered to him at cut rates, and at such low costs as to invite their being retailed at cut rates.

Our ruling will exert a powerful influence, tending towards the centralizing of the best advertised and most noted Talking Machine Goods into the hands of the present line of Dealers, and force these outsiders to search for and develop new trade in new fields (if they can) instead of preying upon the trade already built up by manufacturers who have, by their advertising and methods of marketing, concentrated the sale and consigned their interests and the entire distribution of their wares, at good and assured profits, into the hands of their present Contracted Distributors and Dealers.

We sincerely hope and believe that our Distributors, after due thought upon this subject, will agree that this condition is a wise one, and instead of being in any wise a restriction of trade, will prove to the advantage of and a potent developer of our young and rapidly expanding industry.

Our aims shall continue to be:-

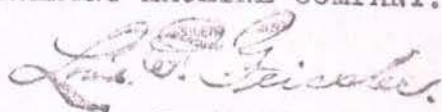
- 1st - QUALITY OF OUR GOODS - a quality which will be found, by actual and critical comparison, to be without serious competition in any part of the World.
- 2nd - A most liberal distribution of profits to our Dealers, and profits that are assured them, under a strict and unswerving business policy, under a contract.
- 3rd - We shall continue to offer the best catalog, most extensive and comprehensive of any Talking Machine Company in the World. We are prepared by our Impresarial, Operatic and Musical connections, as well as financial ability, to secure and retain the World's greatest Artists for your records.
- 4th - "His Master's Voice" - probaby to-day the best known trademark in the World, shall be doubly

so well known within a short time. Our Advertising Campaign and expenditures shall be quadrupled by ways, methods and influences that shall prove absolutely unique in our trade. Our competitors will be absolutely unable "to go the pace".

- 5th - It shall remain our policy to take care of the interests of Victor Distributors and Dealers, and to make such moves as will best permanently conserve their interests, to the end that they shall feel at all times, a confidence in this Company and its wares, which will win their exclusive allegiance and hearty co-operation.

Very respectfully,

VICTOR TALKING MACHINE COMPANY.


Gen'l Manager.

IN THE CIRCUIT COURT OF THE UNITED STATES.

Eastern District of New York.

In Equity. No.

Victor Talking Machine Company, a corporation
organized and existing under the laws of the State of New
Jersey,

Complainant,

vs.

Winant V. P. Bradley, a citizen, resident and
inhabitant of the Eastern District of New York,

Defendant.

SUR MOTION FOR PRELIMINARY INJUNCTION.

REPLY MEMORANDUM ON BEHALF OF COMPLAINANT.

At the hearing on February 20, 1909, the defendant was allowed to file additional reply affidavits on or before March 2, 1909, to which the complainant was given the privilege to reply by affidavit to be filed at the hearing fixed for March 4, 1909. The defendant on March 2, 1909, served a copy of an extensive affidavit of Winant V. P. Bradley, the defendant with exhibits attached, of about twenty-two pages.

It is desired on behalf of the complainant, to file a short supplemental memorandum in reply to the said affidavit and exhibits of the said Bradley affidavit of March 2, in addition to and in conjunction with a replying affidavit of A. C. Middleton, on behalf of the complainant, verified March

3, 1909.

RE RECORDS SAID TO HAVE BEEN PURCHASED FROM THE
BERLINER GRAMOPHONE COMPANY OF CANADA.

The defendant seeks to excuse its acts in counterfeiting complainant's records on the allegation of the defendant, that ~~that~~ some of the counterfeit records in evidence were made from disc records purchased by the defendant in Canada from the Berliner Gramophone Company of Canada, and that for some reason on this account, which is not clearly explained by the defendant, the defendant is therefore excused.

It is respectfully submitted that even if no other evidence were produced, the acts of the defendant complained of, would be equally reprehensible and in unfair competition of trade. If such were the case, the defendant Bradley on page 6 of his affidavit of March 2, 1909, shows that these very records had, among other things, printed upon the label that-

"This record is pressed from Victor Talking Machine Company's matrices.
Licensed for sale and use in Canada only."

That such records had upon them the following license notice ,-

"NOTICE.

"This record is licensed by us for sale and use only, when sold at not less than the price marked on the record, and solely for the purpose of producing sound direct from the record. All parties violating these conditions or otherwise infringing upon our rights, will be subject to suit and damages.

May 1, 1908.

THE BERLINER GRAMOPHONE CO.
of Canada, Ltd."

It is therefore apparent from the defendant's own showing that these Canadian records from some of which he claims to have made the counterfeit records, were pressed from the complainant's matrices and licensed subject to cer-

tain special restrictions; that the records were not sold outright by the complainant, but were merely licensed through the Berliner Gramophone Company of Canada, for certain certain specified uses in Canada only, and among other things, were licensed "solely for the purpose of producing sound direct from the record", and that therefore, among other things, these records as was the case with the complainant's records in the United States, were not sold and given to the public absolutely, but under certain special restrictions, reserving certain property rights in the complainant.

The complainant, therefore, outside of his ordinary right to restrain unfair competition, under the well settled authorities, has also a right in analogy to the common law right, to literary property, trade secrets, etc., which have not been lost by publication or abandonment. In this connection, in passing, the attention of the Court is directed to the decision of the U. S. Supreme Court, in the case of the Board of Trade of Chicago, vs. Christie G. & S. Co., et al., 198 U. S. 236. The attention of the Court is directed to an extract from this decision by Mr. Justice Holmes, contained on page 26 of the Defendant's brief.

The affidavit of A. C. Middleton, of March 3, 1909, on behalf of the complainant, further shows that all these matrices of the Victor Talking Machine Company's records, used by the Berliner Gramophone Company of Canada in pressing records, such as referred to in the Bradley affidavit of March 2, 1909, are the exclusive property of the Victor Talking Machine Company, and that the Berliner Gramophone Company of Canada merely has the right to press records from matrices belonging to the Victor Company, for sale only in the Dominion of Canada, and in no other place or places, and that the records

pressed therefrom, could be used only for the purpose of producing sound therefrom, and for no other purpose. Mr. Middleton's affidavit further shows that the said Canadian Company, pays unto the complainant for the privilege of pressing records from the Victor Company's matrices in Canada, a certain amount in accordance with the number of records pressed, and also pays to the Victor Company, in addition for each record the royalty which the Victor Company is required to pay to the artists singing or reciting the selections recorded upon the matrix or record.

It is therefore respectfully submitted that even if the defendant did make its counterfeit records or some of its counterfeit records from records purchased in Canada, from the Berliner Gramophone Company, which were made as shown, from Victor Talking Machine Company's matrices, there could be no distinction drawn under the circumstances, from counterfeiting records of the complainant country in this country.

The attention of the Court, however, in this connection, is called to the fact that there is no specific averment on the part of Bradley, the defendant, that all, if any, of the said counterfeit records in evidence, were made from ~~such~~ Canadian records. But we submit, it is immaterial whether they were, or were not.

The attention of the Court is here directed to the authorities cited by the complainant in its brief heretofore filed on March 1, 1909, on pages 8, 9 and 10, and pages 12, to 22 including the case of the Columbia Phonograph Company Limited vs. Duval, which we submit abundantly supports the complainant's right to injunction in this case.

The inaccurate character of Mr. Bradley's affidavit of March 2, 1909, is evidenced, among other things, by Mr. Middleton's testimony, showing that Mr. Bradley is entirely in error when he states on page 5 of his affidavit that "the complainant attempted through the Courts of Canada, unsuccessfully to enjoin - " the Berliner Gramophone Company of Canada, from copying or dubbing complainant's records;" Mr. Middleton states "the complainant company never brought suit in the courts of Canada to enjoin the Berliner Gramophone Company of Canada from dubbing records, as alleged in said Bradley affidavit." Mr. Middleton also controverts Mr. Bradley's statement on page 5 of Bradley affidavit, that many persons and corporations have been dubbing records from commercial records of others, at least as far as the complainant's records are concerned; Mr. Middleton shows that the only aggravated instance besides that of this defendant, was that of A. T. Armstrong, in which case suit was brought and Armstrong restrained by Judge Lacombe.

Mr. Middleton also shows that Mr. Bradley is in error when he states on page 2 of his affidavit of March 2, that the complainant claims to have the exclusive right to the singer Antonio Bonci, for record-making purposes; he shows that Bonci does not sing for the Victor Talking Machine Company.

RE ALLEGED ILLEGALITY OF COMPLAINANT'S
BUSINESS.

A large portion of defendant's brief (pages 4 to 18) is devoted to a strained argument that the complainant by virtue of certain Distributors' and Dealers' Contracts, copies of which are attached to the Bradley affidavit of March 2, 1909, should

be held to be combining and conspiring with its dealers and distributors for the purpose of monopolizing the talking machine business, and is therefore an illegal monopoly and liable under the Sherman Act.

It is respectfully submitted that a careful reading of these Dealers' and Distributors' Contracts,, by which the Victor Company gives certain discount privileges, in the selling of its goods under certain conditions, will clearly show the unfounded and unwarranted character of the defendant's contention, and that further argument on the part of the complainant should not be necessary.

The complainant has a perfect right without violating the common law or any statute law, to sell its patented goods to whomsoever it sees fit, and under such restrictions and as it sees fit.

The defendant has cited a multitude of authorities, applicable to circumstances and facts, which are not involved in this case. There can be no doubt, we submit, as to the legality of the complainant's acts and its right to make such Dealers' and Distributors' Contracts for the sale of its patented goods. In this connection, we would cite the following authorities:-

RUBBER TIRE WHEEL COMPANY VS. THE

MILWAUKEE RUBBER WORKS COMPANY, 154 FED. REP. 358.

The Rubber Tire Wheel Company began its action to recover royalties on account of defendant's use, under a license system, of a patent for improvements in rubber tired wheels, which royalties the defendant had failed and refused to pay. The defendant's main defense was that the license system was in violation of the Sherman Anti-Trust Act,^{and} of the

Wisconsin statutes of 1898, which prohibited Wisconsin corporations (defendant was one) from entering into any arrangement or contract intended to restrain competition in the supply or price of any commodity constituting the subject of commerce within the state.

In rendering its decision, the Court said, *inter alia*,

"The Wisconsin Statute is eliminated, because a state cannot subtract from the right conferred upon a patentee and his assigns by the federal laws. For the protection of the physical or moral health of its citizens a state may restrain the use of 'the corporeal thing or article brought into existence by the application of the patented discovery',. but such a laying on of hands does not touch the monopoly of the federal grant."

"Under its constitutional right to legislate for the promotion of the useful arts, Congress passed the patent statutes. The public policy thereby declared is this: Inventive minds may fail to produce many useful things that they would produce if stimulated by the promise of a substantial reward; what is produced is the property of the inventor; he and his heirs and assigns may hold it as a secret till the end of time; the public would be largely benefited by obtaining conveyances of these new properties; so the people through their representatives say to the inventor: Deed us your property, possession to be yielded at the end of 17 years, and in the meantime we will protect you absolutely in the right to exclude every one from making, using, or vending the thing patented, without your permission."

Citing the case of the Victor Talking Machine Company vs. The Gramophone Company, 123 Fed. Rep. 424, the Court further said,-

"Congress put no limitations, excepting time, upon the monopoly. Courts can create none without legislating. The monopoly is of the invention, the mental concept as distinguished from the materials that are brought together to give it a body. Use of the materials, as noted above, may be enjoined as injurious to the public; but that does not invade the monopoly. Use of the invention cannot be had except on the inventor's terms."

See also

U. S. Consolidated Seeded Raisin Company vs. Griffin, & Skelly Co., 126 Fed. Rep. 364;

Columbia Wire Co. vs. Freeman Wire Co., 71 Fed. Rep.

302;

See also

Bement vs. National Harrow Co., 186 U. S. 70;

Rupp-Wittgenfeld Co. v. Elliot, 131 Fed. Rep. 730;

Miles Medical Co. vs. Goldthwaite, 133 Fed. Rep. 794;

Board of Trade vs. Christie Grain & Stock Co., 198 U. S. 236.

The rights of this complainant under this particular Distributors' Agreement referred to by the defendant herein, were sustained in an opinion upon Demurrer to a Cross Bill by Judge Knappen, of the U. S. Circuit Court for the Western District of Michigan, Southern Division, December 3, 1907, in the case of the Duplex Phonograph Company vs. Victor Talking Machine Company.

It is therefore apparent that complainant's said contracts are nothing more than privileges to distributors and dealers under certain conditions which the distributors and dealers agree to and are required to abide by, in order to have the benefit of the discount, and that there is nothing in them illegal, even if the goods were not patented, but, the fact is that the said agreements deal entirely with patented goods, and clearly come within the authorities above cited, if the agreement were otherwise illegal, which it clearly is not.

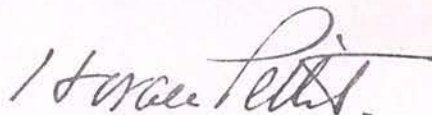
Attention is called to a statement on page 4 of defendant's brief, relative to agreements concerning patented articles, which is not supported by the authorities he cites, in any of the cases quoted in the said brief.

It is respectfully submitted that to allow the defendant to continue counterfeiting complainant's grand Opera records or any other records, pending final hearing, would

cause a great and irreparable damage and injury to the complainant, and further, encourage others who are watching the outcome of this case to do likewise. By enjoining this defendant in the insipieny of his infringement, would be to do him no great harm or damage, in fact, as shown by complainant's affidavits, his investment and business is so comparatively small that an injunction at this time would cause little or no damage. Should this preliminary injunction be ~~approved~~, refused, the complainant has no right of appeal, and it will be therefore helpless in this cause until a distant date when the case should be ready for final hearing.

It is respectfully submitted therefore, that in view of the clear showing by the complainant of this gross invasion of its rights, in unfair competition, and in view of the enormous and irreparable damage that will be done to its business, to allow this defendant at the cost of a few cents to copper-plate and counterfeit its records, some of which involved the expenditure of about Five Thousand Dollars, each to produce, that the discretion of the court should be exercised in favor of the complainant, and preliminary injunction granted.

All of which is respectfully submitted.



Of Counsel for Complainant.

March 4, 1909.

IN THE CIRCUIT COURT OF THE UNITED STATES.

For the Eastern District of New York.

In Equity, No.

Victor Talking Machine Company, a corporation organized
and existing under the laws of the State of New Jersey,

Complainant,

--VS.--

Winant V. P. Bradley, a citizen, resident and inhabitant
of the Eastern District of New York,

Defendant.

ANSWER OF THE DEFENDANT WINANT V. P. BRADLEY.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE
UNITED STATES FOR THE EASTERN DISTRICT OF NEW
YORK:

WINANT V. P. BRADLEY, the defendant above named,
saying and reserving to himself all, and all manner of
exceptions to the manifold errors contained in the bill,
for answer thereto, or to such parts thereof as he is as-
vised, it is material and necessary for him to answer,
says:

1. The defendant denies that he has any knowledge
or information sufficient to form a belief as to the mat-
ters and things in paragraphs 1, 2, 3, 4, 5, 6 and 7,
and, therefore, denies the same.

2. Defendant admits paragraph 8 of the bill,
except that he denies that records made as therein described
are ever referred to or known as "duplicates".

3. Defendant denies that he has any knowledge or

sufficient
information to form a belief as to the allegations contained in paragraphs 9 and 10 of said bill ~~contained~~, and therefore denies the same.

4. The defendant admits that this suit is between citizens of different states, but denies that he has any knowledge or information to form a belief as to whether the subject matter in controversy in this cause exceeds Two Thousand Dollars, as is in paragraph 11 of the bill set forth.

5. Defendant denies that he has any knowledge or information sufficient to form a belief as to the matters and things in paragraphs 12, 13, 14 and 15 of complainant's bill contained, and therefore denies the same.

6. This defendant denies that he and others have conspired and consederated, or are conspiring and consederating with him in preparing and threatening to injure and destroy complainant's alleged rights or any rights in the premises, or to divert to themselves large gains and profits to which the complainant is entitled or may otherwise receive, or are placing on the market in this country counterfeits or spurious imitations of records and offering the same at prices greatly below the prices now being paid by the public and received by the complainant, as set forth in paragraph XVI of the bill, and avers that the process and method of electroplating disc sound records and the using of such electroplates or further electroplates or stamping matrices obtained therefrom for stamping out records, is old and well known and employed by many persons in this and foreign countries, and that in the employment of such method and process no rights of the complainant are threatened, but such method and process are legitimate in every respect and

the method of duplicating records under said process is open to the defendant and the public in general.

7. Defendant admits paragraph XVII of the bill, except that he denies that the matters and things alleged to have been done by this defendant were done for the purpose of injuring and destroying the complainant's business, and further avers that the prices quoted by him are distributors' wholesale prices, while those quoted by the complainant, the Columbia Photograph Company, are list or retail prices, and states that reduced to the basis of the cost for each records face, there is no difference between the prices and discount of said complainant and this defendant, and further denies that he has any knowledge or information sufficient to form a belief as to whether the artists mentioned are under exclusive contract with complainant.

8. This defendant, upon information and belief, denies that a large number of the records referred to in defendant's circular and catalogue are duplicates and counterfeits of certain records which have been made by the complainant in the United States of America as alleged in paragraph XIX of the bill and states that he has no knowledge or information sufficient to form a belief as to whether the artists mentioned are under the exclusive contract of complainant, and therefore denies the same and avers that he is advised and verily believes, that the "other records" referred to in the defendant's circulars, have all been imported from foreign countries, and that the complainants have not, nor ever have had, any special right, property or property right of any kind in or to the records or recordings thereon or any thereof, or in or to the right to reproduce or copy the same.

9. This defendant denies that the acts and preparations of this defendant will encourage others to venture to infringe complainant's alleged rights in an attempt to divert to himself a portion of the profits which would otherwise flow to the complainant, as alleged in paragraph XX of the bill, and defendant further avers that for many years all or substantially all flat talking machine records have been made in disc form, with proper labels impressed in the center, carrying a record upon a single said.

10. Defendant denies that the disc records sold by the defendant are intended for use and are capable of use only in connection with reproducing apparatus, constructed in accordance with the patent mentioned in paragraph XXII of the bill, and that the sound records made by defendant herein are intended for use only in connection with said reproducing apparatus, and that the same are incapable of use in connection with any other form of reproducing apparatus and are never so used, and denies that there is no other commercial reproducing apparatus in commercial use with which said records can be used and that the statement on defendant's label is incorrect and misleading and that there are no commercial mechanical feed machines with which the said records can be used, and this defendant further denies on information and belief, that by the letters patent mentioned the complainant has an exclusive license and controls the said patent, or because the owner of said alleged invention or of any rights and privileges purporting to be secured by the said letters patent.

11. Defendant denies that he has any knowledge or information sufficient to form a belief as to the

matters and things set forth in paragraphs 23, 24, 25, 26, 27, 28, 29 and 30, of the bill herein, and therefore denies the same.

12. Defendant further answering, avers that the records sold and advertised by him for sale, in so far as the same appears to be similar to complainant's so-called "Red-Seal" records in the nature of the selections reproduced, were not made in any way from said records, as he is informed and verily believes, but were made from records purchased in the Dominion of Canada, some of such records having been purchased by him personally, while others of said records have been purchased by others in said Dominion and copied for sale.

13. Defendant further avers that in many instances said Victor records are made from foreign recordings made by foreign corporations, and in at least one instance, that of the singer Antonio Bonci, both the complainant and the Columbia Phonograph Company (General), a corporation, claim to have exclusive rights in the reproduction of the records from his work, said Columbia Company alleging said recording to have been made in Europe. Also many numbers alleged by complainant to have been recorded in this country represent the work of artists who never have visited the United States, and as to which the recordings for complainant have been made in the United States I am not informed and have no means of information, if indeed any have been so made.

14. Defendant further avers that until very recently the records of the complainant were sold without any restrictive notice whatsoever, except the statement that they were patented, and many such records are now so sold, and many are in the hands of the trade and of the

public, having been purchased absolutely and without condition, and the complainant is now engaged in withdrawing many such records by exchange for such as have restrictive endorsements. Such restrictive endorsements are old and well-known in the trade, having been employed and extensively used by the Universal Talking Machine Company, a corporation, as early as the year 1898, appearing on defendant's exhibit "Zonophone Record." That beside such restrictive endorsements, the records of complainant contain claims of patent rights as above indicated.

15. Defendant further avers that in the year 1895, the Berliner Gramophone Company, a corporation, under Emiler Berliner and the United States Gramophone Company, acquired for the United States alone the rights of said Berliner, under and in his patents and inventions, and such rights were later acquired by complainant which is now vent setting and claiming under the same. In the same year said Berliner established his business in the Dominion of Canada, being succeeded by the Berliner Gramophone Company, a Canadian corporation, which ever since that time has enjoyed and now enjoys similar rights in that country to those by the complainant and its said predecessors is enjoyed in this country. That similar, separate and distinct rights have been granted and enjoyed in various European countries under said Berliner patents, as that enjoyed by the Berliner Company of Canada.

16. Defendant further states, upon information and belief, that said Berliner Company of Canada long copied or dubbed without permission, the records of the complainant, although the complainant, through the Courts of Canada, unsuccessfully sought to enjoin such practice or secure recognition of its alleged proprietary right in its said recording, whereupon a contract was entered into

whereunder duplicate matrices were agreed to be sent by complainant to said Berliner Company for its use in pressing records in said Dominion, which records it was agreed should be there sold by it absolutely to its customers and the public generally.

17. Thereafter, as defendant is advised and verily believes, a large number of records were for a long time pressed and absolutely sold and many are still so sold, and defendant produces and exhibits herewith such records so purchased by him and marked "Defendant's Exhibit, Berliner Canadian Record, Unrestricted," with the title of this suit and defendant's initials.

18. Defendant further avers that long prior to the commencement of this suit the complainant established a plan or course of business and entered into a contract with the American Graphophone Company, a corporation, and also and likewise made and entered into certain restrictive trade agreements with all persons to whom it sold any of its wares or machines, said agreements providing that said purchasers should sell the same only at particularly specified prices and should buy similar goods from no other person whatsoever except under the license of complainant, and prohibiting such customers of complainant from selling to any other person or persons engaged in said business or dealing in similar goods, saving only to such as had entered into contracts with complainant containing like restrictions and restraints upon their trade and commerce.

19. That defendant is advised by his counsel and verily believes, that the making of said agreements as aforesaid and the understandings and contracts had in relation thereto and in carrying out the same, are contrary

to public policy, illegal and void, and contrary to the Act of Congress passed July 2, 1890, and to the Statutes of the United States in such case made and provided, and that the acts and proceedings of the complainant and those with it so contracting in the issuing of said circulars and the carrying forward of said business, and in all of the matters and things aforesaid, and in the bringing of this suit in this Court and in seeking to prevent this defendant from duplicating and selling duplicates of said records so copied, are had and carried out as parts of said illegal combination and in aid of said monopoly, and to enable the complainant and its said dealers to maintain the same throughout the United States of America contrary to said Statutes, and to the loss and damage of the People of the United States and of this defendant, and the restraint of such trade and commerce.

20. Defendant further states that he is advised, and therefore avers, that under the facts aforesaid, the complainant herein has no standing in a court of equity to demand the relief prayed for in its bill.

Waldo G. Morse

Solicitor for Defendant,
No. 10 Wall Street,
Cor. of Man. W. Y. City.

Wm. H. Bradley

STATE OF NEW YORK,
County of New York, SS.

WILLIAM V. E. BRADLEY, being duly sworn, deposes and says, that he is the defendant above named; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, excepting as to the matters therein stated upon information and belief, and that as to those matters he believes it to be true.

Sworn to before me this
10th day of March, 1909.

Frank Cockrane
Notary Public (67)
New York County.

Wm. H. Bradley

[PUBLIC—No. 349.]

[H. R. 28192.]

An Act To amend and consolidate the Acts respecting copyright.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person entitled thereto, upon complying with the provisions of this Act, shall have the exclusive right:

(a) To print, reprint, publish, copy, and vend the copyrighted work;

(b) To translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work; to dramatize it if it be a nondramatic work; to convert it into a novel or other nondramatic work if it be a drama; to arrange or adapt it if it be a musical work; to complete, execute, and finish it if it be a model or design for a work of art;

(c) To deliver or authorize the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production;

(d) To perform or represent the copyrighted work publicly if it be a drama or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever;

(e) To perform the copyrighted work publicly for profit if it be a musical composition and for the purpose of public performance for profit; and for the purposes set forth in subsection (a) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced: *Provided*, That the provisions of this Act, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after this Act goes into effect, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights: *And provided further, and as a condition of extending the copyright control to such mechanical reproductions*, That whenever the owner of a musical copyright has used or permitted or knowingly acquiesced in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the musical work, any other person may make similar use of the copyrighted work upon the payment to the copyright proprietor of a royalty of two cents on each such part manufactured, to be paid by the manufacturer thereof; and the copyright proprietor may require, and if so the manufacturer shall furnish, a report under oath on the

In case of the failure of such manufacturer to pay to the copyright proprietor within thirty days after demand in writing the full sum of royalties due at said rate at the date of such demand the court may award taxable costs to the plaintiff and a reasonable counsel fee, and the court may, in its discretion, enter judgment therein for any sum in addition over the amount found to be due as royalty in accordance with the terms of this Act, not exceeding three times such amount.

SEC. 2. That nothing in this Act shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor.

SEC. 4. That the works for which copyright may be secured under this Act shall include all the writings of an author.

(a) Books, including composite and cyclopædic works, directories, gazetteers, and other compilations;

- (b) Periodicals, including newspapers;
- (c) Lectures, sermons, addresses, prepared for oral delivery;
- (d) Dramatic or dramatico-musical compositions;
- (e) Musical compositions;
- (f) Maps;
- (g) Works of art; models or designs for works of art;
- (h) Reproductions of a work of art;
- (i) Drawings or plastic works of a scientific or technical character;
- (j) Photographs;

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works.

SEC. 7. The work which is published in the effect of this Act, or in any reprint of the publication or in a publication consisting of the copy, shall be copyrighted in

Sec. 8. The subject of or assigns, and for the copyright or proprietary only:

(a) When the United

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Provided, nevertheless, That the above specifications shall not be held to limit the subject-matter of copyright as defined in section four of this Act, nor shall any error in classification invalidate or impair the copyright protection secured under this Act.

SEC. 6. That compilations or abridgements, adaptations, arrangements, dramatizations, translations, or other versions of works in the public domain, or of copyrighted works when produced with the consent of the proprietor of the copyright in such works, or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this Act; but the publication of any such new works shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works.

SEC. 7. That no copyright shall subsist in the original text of any work which is in the public domain, or in any work which was published in this country or any foreign country prior to the going into effect of this Act and has not been already copyrighted in the United States, or in any publication of the United States Government, or any reprint, in whole or in part, thereof: *Provided, however,* That the publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgement or annulment of the copyright or to authorize any use or appropriation of such copyright material without the consent of the copyright proprietor.

SEC. 8. That the author or proprietor of any work made the subject of copyright by this Act, or his executors, administrators, or assigns, shall have copyright for such work under the conditions and for the terms specified in this Act: *Provided, however,* That the copyright secured by this Act shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation, only:

(a) When an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work; or

(b) When the foreign state or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this Act or by treaty; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto.

The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time, as the purposes of this Act may require.

SEC. 9. That any person entitled thereto by this Act may secure copyright for his work by publication thereof with the notice of copyright required by this Act; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor, except in the case of books seeking ad interim protection under section twenty-one of this Act.

SEC. 10. That such person may obtain registration of his claim to copyright by complying with the provisions of this Act, including the deposit of copies, and upon such compliance the register of copyrights shall issue to him the certificate provided for in section fifty-five of this Act.

SEC. 11. That copyright may also be had of the works of an author of which copies are not reproduced for sale, by the deposit, with claim of copyright, of one complete copy of such work if it be a lecture or similar production or a dramatic or musical composition; of a photographic print if the work be a photograph; or of a photograph or other identifying reproduction thereof if it be a work of art or a plastic work or drawing. But the privilege of registration of copyright secured hereunder shall not exempt the copyright proprietor from the deposit of copies under sections twelve and thirteen of this Act where the work is later reproduced in copies for sale.

SEC. 12. That after copyright has been secured by publication of the work with the notice of copyright as provided in section nine of this Act, there shall be promptly deposited in the copyright office or in the mail addressed to the register of copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published, which copies, if the work be a book or periodical, shall have been produced in accordance with the manufacturing provisions specified in section fifteen of this Act; or if such work be a contribution to a periodical, for which contribution special registration is requested, one copy of the issue or issues containing such contribution; or if the work is not reproduced in copies for sale, there shall be deposited the copy, print, photograph, or other identifying reproduction provided by section eleven of this Act, such copies or copy, print, photograph, or other reproduction to be accompanied in each case by a claim of copyright. No action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this Act with respect to the deposit of copies and registration of such work shall have been complied with.

SEC. 13. That should the copies called for by section twelve of this Act not be promptly deposited as herein provided, the register of copyrights may at any time after the publication of the work, upon actual notice, require the proprietor of the copyright to deposit them, and after the said demand shall have been made, in default of the deposit of copies of the work within three months from any part of the United States, except an outlying territorial possession of the United States, or within six months from any outlying territorial possession of the United States, or from any foreign country, the proprietor of the copyright shall be liable to a fine of one hundred dollars and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, and the copyright shall become void.

SEC. 14. That the postmaster to whom are delivered the articles deposited as provided in sections eleven and twelve of this Act shall, if requested, give a receipt therefor and shall mail them to their destination without cost to the copyright claimant.

SEC. 15. That of the printed book or periodical specified in section five, subsections (a) and (b) of this Act, except the original text of a book of foreign origin in a language or languages other than English,

the text of all c below provided, the United States setting machine, States from typographic process, performed within the text and bin limits of the U to the illustrati illustrations pro process, and also where in either c country and illu but they shall n the blind, or to other than Engl language seeking

SEC. 16. That be accompanied authorized to ad by the person cla representative res has printed the l been printed from from plates made set therein; or, if photo-engraving within the limits text and binding the limits of the place where and type was set or p engraving process date of the comp publication.

SEC. 17. That registration of a affidavit as to his be deemed guilty shall be punished and all of his rights be forfeited.

SEC. 18. That tl this Act shall cons viation "Copr." prietor, and if the work, the notice s was secured by p works specified in this Act, the notic circle, thus: C), a or symbol of the

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the text of all copies accorded protection under this Act, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of type-setting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art; but they shall not apply to works in raised characters for the use of the blind, or to books of foreign origin in a language or languages other than English, or to books published abroad in the English language seeking ad interim protection under this Act.

SEC. 16. That in the case of the book the copies so deposited shall be accompanied by an affidavit, under the official seal of any officer authorized to administer oaths within the United States, duly made by the person claiming copyright or by his duly authorized agent or representative residing in the United States, or by the printer who has printed the book, setting forth that the copies deposited have been printed from type set within the limits of the United States or from plates made within the limits of the United States from type set therein; or, if the text be produced by lithographic process, or photo-engraving process, that such process was wholly performed within the limits of the United States, and that the printing of the text and binding of the said book have also been performed within the limits of the United States. Such affidavit shall state also the place where and the establishment or establishments in which such type was set or plates were made or lithographic process, or photo-engraving process or printing and binding were performed and the date of the completion of the printing of the book or the date of publication.

SEC. 17. That any person who, for the purpose of obtaining registration of a claim to copyright, shall knowingly make a false affidavit as to his having complied with the above conditions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, and all of his rights and privileges under said copyright shall thereafter be forfeited.

SEC. 18. That the notice of copyright required by section nine of this Act shall consist either of the word "Copyright" or the abbreviation "Copr.", accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsections (f) to (k), inclusive, of section five of this Act, the notice may consist of the letter C inclosed within a circle, thus: C), accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: *Provided*, That on some

accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright is subsisting when this Act shall go into effect, the notice of copyright may be either in one of the forms prescribed herein or in one of those prescribed by the Act of June eighteenth, eighteen hundred and seventy-four.

SEC. 19. That the notice of copyright shall be applied, in the case of a book or other printed publication, upon its title-page or the page immediately following, or if a periodical either upon the title-page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title-page or the first page of music: *Provided*, That one notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice.

SEC. 20. That where the copyright proprietor has sought to comply with the provisions of this Act with respect to notice, the omission by accident or mistake of the prescribed notice from a particular copy or copies shall not invalidate the copyright or prevent recovery for infringement against any person who, after actual notice of the copyright, begins an undertaking to infringe it, but shall prevent the recovery of damages against an innocent infringer who has been misled by the omission of the notice; and in a suit for infringement no permanent injunction shall be had unless the copyright proprietor shall reimburse to the innocent infringer his reasonable outlay innocently incurred if the court, in its discretion, shall so direct.

SEC. 21. That in the case of a book published abroad in the English language before publication in this country, the deposit in the copyright office, not later than thirty days after its publication abroad, of one complete copy of the foreign edition, with a request for the reservation of the copyright and a statement of the name and nationality of the author and of the copyright proprietor and of the date of publication of the said book, shall secure to the author or proprietor an ad interim copyright, which shall have all the force and effect given to copyright by this Act, and shall endure until the expiration of thirty days after such deposit in the copyright office.

SEC. 22. That whenever within the period of such ad interim protection an authorized edition of such book shall be published within the United States, in accordance with the manufacturing provisions specified in section fifteen of this Act, and whenever the provisions of this Act as to deposit of copies, registration, filing of affidavit, and the printing of the copyright notice shall have been duly complied with, the copyright shall be extended to endure in such book for the full term elsewhere provided in this Act.

SEC. 23. That the copyright secured by this Act shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name: *Provided*, That in the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of

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the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work when such contribution has been separately registered, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication.

SEC. 24. That the copyright subsisting in any work at the time when this Act goes into effect may, at the expiration of the term provided for under existing law, be renewed and extended by the author of such work if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then by the author's executors, or in the absence of a will, his next of kin, for a further period such that the entire term shall be equal to that secured by this Act, including the renewal period: *Provided, however*, That if the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor shall be entitled to the privilege of renewal and extension granted under this section: *Provided*, That application for such renewal and extension shall be made to the copyright office and duly registered therein within one year prior to the expiration of the existing term.

SEC. 25. That if any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:

(a) To an injunction restraining such infringement;

(b) To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts as hereinafter stated, but in the case of a newspaper reproduction of a copyrighted photograph such damages shall not exceed the sum of two hundred dollars nor be less than the sum of fifty dollars, and such damages shall in no other case exceed the sum of five thousand dollars nor be less than the sum of two hundred and fifty dollars, and shall not be regarded as a penalty:

First. In the case of a painting, statue, or sculpture, ten dollars for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Second. In the case of any work enumerated in section five of this Act, except a painting, statue, or sculpture, one dollar for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Third. In the case of a lecture, sermon, or address, fifty dollars for every infringing delivery;

Fourth. In the case of a dramatic or dramatico-musical or a choral or orchestral composition, one hundred dollars for the first and fifty dollars for every subsequent infringing performance; in the case of other musical compositions, ten dollars for every infringing performance;

(c) To deliver up on oath, to be impounded during the pendency of the action, upon such terms and conditions as the court may prescribe, all articles alleged to infringe a copyright;

(d) To deliver up on oath for destruction all the infringing copies or devices, as well as all plates, molds, matrices, or other means for making such infringing copies as the court may order;

(e) Whenever the owner of a musical copyright has used or permitted the use of the copyrighted work upon the parts of musical instruments serving to reproduce mechanically the musical work, then in case of infringement of such copyright by the unauthorized manufacture, use, or sale of interchangeable parts, such as disks, rolls, bands, or cylinders for use in mechanical music-producing machines adapted to reproduce the copyrighted music; no criminal action shall be brought, but in a civil action an injunction may be granted upon such terms as the court may impose, and the plaintiff shall be entitled to recover in lieu of profits and damages a royalty as provided in section one, subsection (e), of this Act: *Provided also*, That whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this Act, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office sending to the copyright office a duplicate of such notice; and in case of his failure so to do the court may, in its discretion, in addition to sums hereinabove mentioned, award the complainant a further sum, not to exceed three times the amount provided by section one, subsection (e), by way of damages, and not as a penalty, and also a temporary injunction until the full award is paid.

Rules and regulations for practice and procedure under this section shall be prescribed by the Supreme Court of the United States.

SEC. 26. That any court given jurisdiction under section thirty-four of this Act may proceed in any action, suit, or proceeding instituted for violation of any provision hereof to enter a judgment or decree enforcing the remedies herein provided.

SEC. 27. That the proceedings for an injunction, damages, and profits, and those for the seizure of infringing copies, plates, molds, matrices, and so forth, aforementioned, may be united in one action.

SEC. 28. That any person who willfully and for profit shall infringe any copyright secured by this Act, or who shall knowingly and willfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by a fine of not less than one

hundred dollars, at the discretion of the court; and shall be so secured by public sale or obtained by school children or charitable organizations.

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hundred dollars nor more than one thousand dollars, or both, in the discretion of the court: *Provided, however,* That nothing in this Act shall be so construed as to prevent the performance of religious or secular works, such as oratorios, cantatas, masses, or octavo choruses by public schools, church choirs, or vocal societies, rented, borrowed, or obtained from some public library, public school, church choir, school choir, or vocal society, provided the performance is given for charitable or educational purposes and not for profit.

SEC. 29. That any person who, with fraudulent intent, shall insert or impress any notice of copyright required by this Act, or words of the same purport, in or upon any uncopyrighted article, or with fraudulent intent shall remove or alter the copyright notice upon any article duly copyrighted shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars and not more than one thousand dollars. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, or who shall knowingly import any article bearing such notice or words of the same purport, which has not been copyrighted in this country, shall be liable to a fine of one hundred dollars.

SEC. 30. That the importation into the United States of any article bearing a false notice of copyright when there is no existing copyright thereon in the United States, or of any piratical copies of any work copyrighted in the United States, is prohibited.

SEC. 31. That during the existence of the American copyright in any book the importation into the United States of any piratical copies thereof or of any copies thereof (although authorized by the author or proprietor) which have not been produced in accordance with the manufacturing provisions specified in section fifteen of this Act, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photo-engraving process not performed within the limits of the United States, in accordance with the provisions of section fifteen of this Act, shall be, and is hereby, prohibited: *Provided, however,* That, except as regards piratical copies, such prohibition shall not apply:

(a) To works in raised characters for the use of the blind;

(b) To a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization;

(c) To the authorized edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country.

(d) To any book published abroad with the authorization of the author or copyright proprietor when imported under the circumstances stated in one of the four subdivisions following, that is to say:

First. When imported, not more than one copy at one time, for individual use and not for sale; but such privilege of importation shall not extend to a foreign reprint of a book by an American author copyrighted in the United States;

Second. When imported by the authority or for the use of the United States;

Third. When imported, for use and not for sale, not more than one copy of any such book in any one invoice, in good faith, by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious purposes, or for the encouragement of the fine arts, or for any college, academy, school, or seminary of learning, or for any State, school, college, university, or free public library in the United States;

Fourth. When such books form parts of libraries or collections purchased en bloc for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: *Provided*, That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright or annul or limit the copyright protection secured by this Act, and such unlawful use shall be deemed an infringement of copyright.

SEC. 32. That any and all articles prohibited importation by this Act which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however*, That all copies of authorized editions of copyright books imported in the mails or otherwise in violation of the provisions of this Act may be exported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve willful negligence or fraud.

SEC. 33. That the Secretary of the Treasury and the Postmaster-General are hereby empowered and required to make and enforce such joint rules and regulations as shall prevent the importation into the United States in the mails of articles prohibited importation by this Act, and may require notice to be given to the Treasury Department or Post-Office Department, as the case may be, by copyright proprietors or injured parties, of the actual or contemplated importation of articles prohibited importation by this Act, and which infringe the rights of such copyright proprietors or injured parties.

SEC. 34. That all actions, suits, or proceedings arising under the copyright laws of the United States shall be originally cognizable by the circuit courts of the United States, the district court of any Territory, the supreme court of the District of Columbia, the district courts of Alaska, Hawaii, and Porto Rico, and the courts of first instance of the Philippine Islands.

SEC. 35. That civil actions, suits, or proceedings arising under this Act may be instituted in the district of which the defendant or his agent is an inhabitant, or in which he may be found.

SEC. 36. That any such court or judge thereof shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions to prevent and restrain the violation of any right secured by said laws, according to the course and principles of courts of equity, on such terms as said court or judge may deem reasonable. Any injunction that may be granted restraining and enjoining the doing of anything

forbidden by the injunction may be operative in proceedings in possession jurisdiction.

SEC. 37. That the court, when to enforce said certified copy of office.

SEC. 38. That the provisions of the laws of the United States in the manner of cases determined.

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forbidden by this Act may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative throughout the United States and be enforceable by proceedings in contempt or otherwise by any other court or judge possessing jurisdiction of the defendants.

SEC. 37. That the clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to enforce said injunction, transmit without delay to said court a certified copy of all the papers in said cause that are on file in his office.

SEC. 38. That the orders, judgments, or decrees of any court mentioned in section thirty-four of this Act arising under the copyright laws of the United States may be reviewed on appeal or writ of error in the manner and to the extent now provided by law for the review of cases determined in said courts, respectively.

SEC. 39. That no criminal proceeding shall be maintained under the provisions of this Act unless the same is commenced within three years after the cause of action arose.

SEC. 40. That in all actions, suits, or proceedings under this Act, except when brought by or against the United States or any officer thereof, full costs shall be allowed, and the court may award to the prevailing party a reasonable attorney's fee as part of the costs.

SEC. 41. That the copyright is distinct from the property in the material object copyrighted, and the sale or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object; but nothing in this Act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained.

SEC. 42. That copyright secured under this or previous Acts of the United States may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will.

SEC. 43. That every assignment of copyright executed in a foreign country shall be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts. The certificate of such acknowledgement under the hand and official seal of such consular officer or secretary of legation shall be prima facie evidence of the execution of the instrument.

SEC. 44. That every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded.

SEC. 45. That the register of copyrights shall, upon payment of the prescribed fee, record such assignment, and shall return it to the sender with a certificate of record attached under seal of the copyright office, and upon the payment of the fee prescribed by this Act he shall furnish to any person requesting the same a certified copy thereof under the said seal.

SEC. 46. That when an assignment of the copyright in a specified book or other work has been recorded the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this Act.

SEC. 47. That all records and other things relating to copyrights required by law to be preserved shall be kept and preserved in the copyright office, Library of Congress, District of Columbia, and shall be under the control of the register of copyrights, who shall, under the direction and supervision of the Librarian of Congress, perform all the duties relating to the registration of copyrights.

SEC. 48. That there shall be appointed by the Librarian of Congress a register of copyrights, at a salary of four thousand dollars per annum, and one assistant register of copyrights, at a salary of three thousand dollars per annum, who shall have authority during the absence of the register of copyrights to attach the copyright office seal to all papers issued from the said office and to sign such certificates and other papers as may be necessary. There shall also be appointed by the Librarian such subordinate assistants to the register as may from time to time be authorized by law.

SEC. 49. That the register of copyrights shall make daily deposits in some bank in the District of Columbia, designated for this purpose by the Secretary of the Treasury as a national depository, of all moneys received to be applied as copyright fees, and shall make weekly deposits with the Secretary of the Treasury, in such manner as the latter shall direct, of all copyright fees actually applied under the provisions of this Act, and annual deposits of sums received which it has not been possible to apply as copyright fees or to return to the remitters, and shall also make monthly reports to the Secretary of the Treasury and to the Librarian of Congress of the applied copyright fees for each calendar month, together with a statement of all remittances received, trust funds on hand, moneys refunded, and unapplied balances.

SEC. 50. That the register of copyrights shall give bond to the United States in the sum of twenty thousand dollars, in form to be approved by the Solicitor of the Treasury and with sureties satisfactory to the Secretary of the Treasury, for the faithful discharge of his duties.

SEC. 51. That the register of copyrights shall make an annual report to the Librarian of Congress, to be printed in the annual report on the Library of Congress, of all copyright business for the previous fiscal year, including the number and kind of works which have been deposited in the copyright office during the fiscal year, under the provisions of this Act.

SEC. 52. That the seal provided under the Act of July eighth, eighteen hundred and seventy, and at present used in the copyright office, shall continue to be the seal thereof, and by it all papers issued from the copyright office requiring authentication shall be authenticated.

SEC. 53. That, subject to the approval of the Librarian of Congress, the register of copyrights shall be authorized to make rules and regulations for the registration of claims to copyright as provided by this Act.

SEC. 54. That the register of copyrights shall provide and keep such record books in the copyright office as are required to carry out the provisions of this Act, and whenever deposit has been made

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in the copyright office of a copy of any work under the provisions of this Act he shall make entry thereof.

SEC. 55. That in the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the copyright office, to contain his name and address, the title of the work upon which copyright is claimed, the date of the deposit of the copies of such work, and such marks as to class designation and entry number as shall fully identify the entry. In the case of a book the certificate shall also state the receipt of the affidavit as provided by section sixteen of this Act, and the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The register of copyrights shall prepare a printed form for the said certificate, to be filled out in each case as above provided for, which certificate, sealed with the seal of the copyright office, shall, upon payment of the prescribed fee, be given to any person making application for the same, and the said certificate shall be admitted in any court as prima facie evidence of the facts stated therein. In addition to such certificate the register of copyrights shall furnish, upon request, without additional fee, a receipt for the copies of the work deposited to complete the registration.

SEC. 56. That the register of copyrights shall fully index all copyright registrations and assignments and shall print at periodic intervals a catalogue of the titles of articles deposited and registered for copyright, together with suitable indexes, and at stated intervals shall print complete and indexed catalogues for each class of copyright entries, and may thereupon, if expedient, destroy the original manuscript catalogue cards containing the titles included in such printed volumes and representing the entries made during such intervals. The current catalogues of copyright entries and the index volumes herein provided for shall be admitted in any court as prima facie evidence of the facts stated therein as regards any copyright registration.

SEC. 57. That the said printed current catalogues as they are issued shall be promptly distributed by the copyright office to the collectors of customs of the United States and to the postmasters of all exchange offices of receipt of foreign mails, in accordance with revised lists of such collectors of customs and postmasters prepared by the Secretary of the Treasury and the Postmaster-General, and they shall also be furnished to all parties desiring them at a price to be determined by the register of copyrights, not exceeding five dollars per annum for the complete catalogue of copyright entries and not exceeding one dollar per annum for the catalogues issued during the year for any one class of subjects. The consolidated catalogues and indexes shall also be supplied to all persons ordering them at such prices as may be determined to be reasonable, and all subscriptions for the catalogues shall be received by the Superintendent of Public Documents, who shall forward the said publications; and the moneys thus received shall be paid into the Treasury of the United States and accounted for under such laws and Treasury regulations as shall be in force at the time.

SEC. 58. That the record books of the copyright office, together with the indexes to such record books, and all works deposited and retained in the copyright office, shall be open to public inspection; and copies

may be taken of the copyright entries actually made in such record books, subject to such safeguards and regulations as shall be prescribed by the register of copyrights and approved by the Librarian of Congress.

SEC. 59. That of the articles deposited in the copyright office under the provisions of the copyright laws of the United States or of this Act, the Librarian of Congress shall determine what books and other articles shall be transferred to the permanent collections of the Library of Congress, including the law library, and what other books or articles shall be placed in the reserve collections of the Library of Congress for sale or exchange, or be transferred to other governmental libraries in the District of Columbia for use therein.

SEC. 60. That of any articles undisposed of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the register of copyrights jointly shall, at suitable intervals, determine what of these received during any period of years it is desirable or useful to preserve in the permanent files of the copyright office, and, after due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: *Provided*, That there shall be printed in the Catalogue of Copyright Entries from February to November, inclusive, a statement of the years of receipt of such articles and a notice to permit any author, copyright proprietor, or other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which relates to any of his productions deposited or registered for copyright within the period of years stated, not reserved or disposed of as provided for in this Act: *And provided further*, That no manuscript of an unpublished work shall be destroyed during its term of copyright without specific notice to the copyright proprietor or record, permitting him to claim and remove it.

SEC. 61. That the register of copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees: For the registration of any work subject to copyright, deposited under the provisions of this Act, one dollar, which sum is to include a certificate of registration under seal: *Provided*, That in the case of photographs the fee shall be fifty cents where a certificate is not demanded. For every additional certificate of registration made, fifty cents. For recording and certifying any instrument of writing for the assignment of copyright, or any such license specified in section one, subsection (e), or for any copy of such assignment or license, duly certified, if not over three hundred words in length, one dollar; if more than three hundred and less than one thousand words in length, two dollars; if more than one thousand words in length, one dollar additional for each one thousand words or fraction thereof over three hundred words. For recording the notice of user or acquiescence specified in section one, subsection (e), twenty-five cents for each notice if not over fifty words, and an additional twenty-five cents for each additional one hundred words. For comparing any copy of an assignment with the record of such document in the copyright office and certifying the same under seal, one dollar. For recording the extension or renewal of copyright provided for in sections twenty-three and twenty-four of this Act, fifty cents. For recording the transfer of the proprietorship of copyrighted articles, ten cents for each title of a book or other article, in addition to the fee prescribed

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for recording the instrument of assignment. For any requested search of copyright office records, indexes, or deposits, fifty cents for each full hour of time consumed in making such search: *Provided*, That only one registration at one fee shall be required in the case of several volumes of the same book deposited at the same time.

SEC. 62. That in the interpretation and construction of this Act "the date of publication" shall in the case of a work of which copies are reproduced for sale or distribution be held to be the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority, and the word "author" shall include an employer in the case of works made for hire.

SEC. 63. That all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, but nothing in this Act shall affect causes of action for infringement of copyright heretofore committed now pending in courts of the United States, or which may hereafter be instituted; but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

SEC. 64. That this Act shall go into effect on the first day of July, nineteen hundred and nine.

Approved, March 4, 1909.

COUNSELLOR IN PATENT CAUSES.

TRADE MARKS AND COPYRIGHTS.

TELEPHONES:

BELL.—FILBERT, 48-26.
KEYSTONE.—RACE, 6-St.

HARRY COBB KENNEDY.
ALSTON B. MOULTON.

NEW YORK CITY,
STIMSON & WILLIAMS,
55 LIBERTY STREET.

HORACE PETTIT,

LAW OFFICES:

604 STEPHEN GIRARD BUILDING
12TH ABOVE CHESTNUT STREET

CABLE ADDRESS, SECO PHILA.

PHILADELPHIA, March 18, 1909.

Re Victor Talking Machine Co. vs. Winant
V.P. Bradley--
Sur Motion for Preliminary Injunction.

Hon. Thomas I. Chatfield,
c/o Clerk U. S. Circuit Court,
Post Office Bldg.,
Brooklyn, N. Y.

Dear Sir:

I have just received a copy of Mr. Morse's Memorandum relative to the New Copyright Act which goes into effect July 1, 1909, and relative to certain bottle cases, on behalf of the defendant, dated March 15, 1909; also a copy of Mr. Massie's Replying Memorandum, of the 17th inst., on behalf of the Fonotipia Company and the Columbia Phonograph Company.

I have already sent your Honor a copy of the New Copyright Act, with a short letter dated the 11th inst.

It seems to me that this Act in no manner affects the above suit or the complainant's rights as set forth in the bill and motion papers. It merely gives to the author and composer or owner of copyrighted articles, as far as mechanical reproducing devices are concerned, the right to prevent such copyrighted articles or compositions, on and after July 1, 1909, from being used on such mechanical reproducing devices, without consent.

After the Act goes into effect, on July 1, 1909, the complainant in this case would have no greater right to enjoin the infringement or unfair competition complained of in the present suit than it has now, as I understand the Act, so far as the music employed upon the records is uncopyrighted.

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PHILADELPHIA,.....

Hon. Thomas I. Chatfield,

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In other words, a great many of the old standard operas, such as sung by distinguished opera singers, have no copyright protection, and as to such records, of which there are a great many, the defendant, after the new Copyright Act goes into effect, can do exactly what it is doing now. The only musical compositions which can be protected to the owner of the copyright after the new Act goes into effect are those which shall be copyrighted on or after July 1, 1909. Your Honor can therefore see that the defendant can, after July 1, 1909, dub and copy the same records that it is dubbing and copying now, and an unlimited number of others, with impunity, unless it can be enjoined on the ground of unfair competition, as prayed for in the Bill of Complaint, and as set forth in the motion papers. The new Copyright Act, therefore, does not touch the present question. The defendant, it is submitted, is merely invoking this act in an attempt to cloud the question, without any substantial reason or foundation whatsoever.

The defendant, by unfair means, is destroying and injuring the complainant's business, through the medium of unfair competition. As shown by the authorities, among others the Stock Ticker Cases, the complainant has established a valuable property right, not perhaps a physical embodiment of property, such as real estate, and equity extends, and should extend appropriate protection to such intangible property rights, acquired by years of trade and industry, and at an enormous expense, thus being able to accumulate and provide something not only for the benefit of the complainant, but for the great benefit, amusement and education of the public; which property right will be and must necessarily impair, if not destroyed eo instante when a court of competent jurisdiction decides that there is no such right in the complainant, and

COUNSELLOR IN PATENT CAUSES.

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PHILADELPHIA, March 18, 1909.

Hon. Thomas I. Chatfield,

-3-

the defendant and any piratical concern may, for a few cents, appropriate what has cost the complainant to provide and accumulate many hundreds of thousands of dollars.

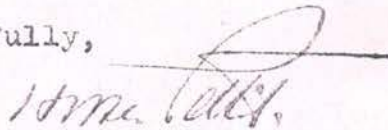
It is respectfully submitted that Mr. Massie's brief very thoroughly covers the subject, and that no further argument should be necessary.

Mr. Morse's comments on the bottle cases, we submit, in no manner affect their efficacy for the purposes for which they were cited, as fully set forth in my previous brief.

With kind regards, I remain,

Yours very respectfully,

P/H



May 19, 1909.

My dear Mr. Massie:

A book upon the subject of Unfair Competition in trade has just come from the press and I am sending to Judge Chatfield the enclosed memorandum of citations to its pages, and references to our case, with a letter of which a copy is enclosed.

Yours very sincerely,

(Sgd) *Waldo F. Morse*

C. A. L. Massie, Esq.,
#154 Nassau Street,
New York City.

COUNSELLOR IN PATENT CAUSES.

TRADE MARKS AND COPYRIGHTS.

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CABLE ADDRESS, SECO PHILA

PHILADELPHIA, March 25, 1909.

Re Victor Talking Machine Co., et al. vs.
Winant V. P. Bradley-
U.S.Circuit Court, Eastern District
of New York, In Equity.

Hon. Thomas I. Chatfield,
c/o Clerk, U. S. Circuit Court,
P. O. Building,
Brooklyn, N. Y.

Dear Judge Chatfield:-

While I have not before advised you formally that I accept the proposition of Waldo G. Morse, attorney for the defendant to go to final hearing on the bill, answer and affidavits in the above case, I believe that Mr. Wessie has so advised you in his case, and assumed that you understood that such was the case in my suit. I am forwarding to the Clerk's office a replication.

Yours very respectfully,

Horace Pettit

P/W

IN THE CIRCUIT COURT OF THE UNITED STATES.

Eastern District of New York.

In Equity. No.

Victor Talking Machine Company, a corporation or-
ganized and existing under the laws of the State of New Jersey,
Complainant,

vs.

Winant V. P. Bradley, a citizen, resident and in-
habitant of the Eastern District of New York,
Defendant.

The Replication of the Victor Talking Machine Com-
pany, Complainant, to the Answer of Respondent, Winant V. P.
Bradley.

This repliant, saving and reserving unto itself all
and all manner of advantage and exception to the manifold
insufficiencies of said Answer of the respondent, Winant V.P.
Bradley, for replication thereunto says, that it will aver
and prove its said Bill to be true, certain and sufficient
in law to be answered unto, and that the said Answer of the
respondent Winant V. P. Bradley, is uncertain, untrue and in-
sufficient to be replied unto by this repliant; without this
that any other matter or thing whatsoever in the said Answer
contained, material or effectual in the law to be replied unto,
confessed and avoided, traversed or denied, is true; all of
which matters and things this repliant is and will be ready to
aver and prove as this Honorable Court shall direct; and

humbly prays, as in and by its Bill it has already prayed.

Wm. Lusk.

Counsel for Complainant.

March 25, 1909.

Thomas O. Hallan,

Attorney in Charge.

55 Liberty Street

Brooklyn, New York
N.Y.

Supreme Court of the United States.

No. 81.—OCTOBER TERM, 1908.

Leeds & Catlin Company, Petitioner, <i>vs.</i> Victor Talking Machine Company and United States Gramophone Company,	}	On writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.
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[April 19, 1909.]

Mr. Justice McKENNA delivered the opinion of the Court.

This writ was issued to bring up for review the judgment of the Circuit Court, affirmed by the Circuit Court of Appeals, adjudging petitioner guilty of contempt of court for violating the injunction which has just been considered in No. 80, and to pay a fine of \$1,000, one-half to the United States and one-half to complainants in the suit, respondents here.

The injunction, as we said in the opinion in No. 80, enjoined petitioner, the Leeds & Catlin Company, from manufacturing, using or selling the method expressed in claim 5 of letters patent No. 534,543 to Emil Berliner, dated February 19, 1895, or the apparatus covered by claim 35.

On the 15th of November, 1906, respondent, Victor Talking Machine Company, filed a petition in the Circuit Court, charging petitioner with a violation of such injunction. A rule was issued against the Leeds & Catlin Company to show cause why an attachment should not issue against it for contempt of court for violating the injunction, which came on to be heard upon supporting and opposing affidavits and the answer of the Leeds & Catlin Company.

A judgment was entered adjudging the Leeds & Catlin Company guilty of contempt, which was affirmed by the Circuit Court of Appeals. — Fed. Rep. ; Fed. Rep.

The answer of petitioner referred to the record in No. 80, and in this court it is stipulated that that record shall be used as part of the record in the pending cases, and certain of the defenses there made are repeated here. For instance, it is contended, and the record in No. 80 is adduced to support the contention, that (1) the patent in suit having expired before the suit was begun, the Circuit Court was without jurisdiction to entertain the suit; (2) claims in suit being for the functions of a machine are void. And it is further contended that "hence the judgment finding defendant [petitioner] in contempt (a) was void, because beyond the jurisdiction of

the court; and (b) should be set aside, because the claims being void the injunction was improperly granted." These contentions are disposed of by the opinion in No. 80, and we may confine our discussions to the other defenses made in the contempt proceedings.

The facts are practically undisputed, and a detail of them is unnecessary. It is enough to say that petitioner is a manufacturer of disc records, such as are described in No. 80. That is, a record upon which is inscribed a lateral undulating groove of even depth, which, when the disc is revolved, compels the reproducing stylus to be vibrated and propelled across its face.

It will be observed how important the record is to the invention embodied in the claims. It is the undulations in the side walls of the spiral groove which vibrate the stylus back and forth, transmitting the recorded sound waves to the diaphragm, at the same time propelling the stylus as it engages with the record. If a comparison may be made between the importance of the elements, as high a degree (if not a higher degree) must be awarded to the disc with its lateral undulations as to the stylus. It is the disc that serves to distinguish the invention—to mark the advance upon the prior art. "As to the reproducing stylus," as is said by respondent, "it is only necessary that it should be shaped for engagement with the record and so positioned and supported as to be free to be vibrated and propelled by the record."

The lower courts found that most of the sales (we quote from the opinion of the Circuit Court of Appeals) of the records by petitioner "were knowingly made to enable the owners of the Victor Talking Machines to reproduce such musical pieces as they wished by the combination of the Leeds & Catlin record with said machines; and that the Leeds & Catlin Company made no effort to restrict the use to which their records might be put until after motion to punish for contempt had been made; that the only effort at such restriction ever made was to answer upon the face of the record and notice to the effect that such record was intended and sold for use with the 'feed-device machine;' that the records sold by plaintiff in error [petitioner] were far more frequently bought to increase the repertoire of the purchaser's Victor machine than to replace wornout or broken records." The "feed-device machine" referred to by the court was a talking machine bought by petitioner after, as petitioner avers, the Circuit Court of Appeals affirmed the injunction, and in connection with which it sold, as it also avers, and used, its sound records. The court assumed, for the purpose of the cause, that the feed-device machine might be regarded as not infringing any of the rights of the Victor Company under the Berliner patent. The court further found that it was established by the evidence that the discs were equally suitable for that machine as for the machine of the Vic-

tor Company, but that it proceeded a practically spoken sound, whereas the Berliner patent here under and generally used, and sold its records with the all by the public it would combination protected by to." And the court concluded petitioner had "made and sold patent, with the intent to complete the combination Co. v. Eureka Co., 77 Fed. 111 Fed. 1005."

Petitioner contests the which, it is contended, is circuit, that "the person the patentee has the right bination and for such purpose the patentee or his license said that "the majority of such replacement of a similar reconstruction and not with combination from the patent adds that where an invention bination that it cannot be in use, without successive ment of such element, if from the patentee is in a not a reconstruction of the rights of the purchaser." Albany Paper Co., 152 U. year Co. v. Jackson, 112 U.

The question in the case may be brought to a new application of some rudimentary

A combination is a combination and others new, or all old is the invention, and is as or non-composite instrument infringer of it. Whoever may be well here to get rid

tor Company, but that it "was not at or before the time of beginning this proceeding a practically or commercially known reproducer of musical or spoken sound, whereas the Victor machine, embodying the claims of the Berliner patent here under consideration, was at such times widely known and generally used, and that the plaintiff in error [petitioner] knew, and sold its records with the knowledge, that if its output was to be used at all by the public it would be used with the Victor machine, and in the combination protected by the claims of the Berliner patent, before referred to." And the court concluded that upon these facts it was clear that petitioner had "made and sold a single element of the claims of the Berliner patent, with the intent that it should be united to the other elements and complete the combination. And this is infringement. *Heaton Peninsula Co. v. Eureka Co.*, 77 Fed. 297; adopted by this court, *Courtelyou v. Lowe*, 111 Fed. 1005."

Petitioner contests the conclusion and opposes it by the principle, which, it is contended, is established by cases in this court, as well as at circuit, that "the person who has purchased a patented combination from the patentee has the right to replace an unpatented element of the combination and for such purpose to purchase such element from another than the patentee or his licensee." To bring this principle in clear relief it is said that "the majority of the Circuit Court of Appeals has held that such replacement of a single unpatented element of the combination is reconstruction and not within the rights of the purchaser of the patented combination from the patentee." And, to complete its argument, petitioner adds that where an inventor so arranges the parts of his patented combination that it cannot satisfactorily, successfully or usefully be continued in use, without successive replacements of one of its elements, "the replacement of such element, if unpatented, by the purchaser of the combination from the patentee is in accordance with the intention of the patentee and not a reconstruction of the patented combination, but an act within the rights of the purchaser." For these principles *Morgan Envelope Co. v. Albany Paper Co.*, 152 U.S. 425; *Wilson v. Simpson*, 9 How. 109; *Good-year Co. v. Jackson*, 112 Fed. 146, are adduced.

The question in the case, therefore, is single and direct, and its discussion may be brought to a narrow compass. Its solution depends upon the application of some rudimentary principles of patent law.

A combination is a composition of elements, some of which may be old and others new, or all old or all new. It is, however, the combination that is the invention, and is as much a unit in contemplation of law as a single or non-composite instrument. Whoever uses it without permission is an infringer of it. Whoever contributes to such use is an infringer of it. It may be well here to get rid of a misleading consideration. It can make no

difference as to the infringement or non-infringement of a combination that one of its elements or all of its elements are unpatented. For instance, in the case at bar the issue between the parties would be exactly the same, even if the record disc were a patented article which petitioner had a license to use or to which respondent had no rights independent of his right to its use in the combination. In other words, the fact that the disc sold by petitioner is unpatented does not affect the question involved except to give an appearance of a limitation of the rights of an owner of a Victor machine other than those which attach to him as a purchaser. The question is, what is the relation of the purchaser to the Victor Company? What rights does he derive from it? To use the machine, of course, but it is the concession of the argument of petitioner that he may not reconstruct it. Has he a license to repair deterioration, and when does repair become reconstruction? It would seem that on principle when deterioration of an element has reached the point of unfitness there is a destruction of the combination and a renewal of the element is a reconstruction of the combination. And it would also seem on principle that there could be no license implied from difference in the durability of the elements or periodicity in their use. This, however, is asserted, and we come to the consideration of the cases upon which the assertion is based, and how far it has application under the facts of this record.

Great stress is put upon *Morgan Envelope Co. v. Albany Co.*, *supra*. That case was a bill in equity for the infringement of three letters patent, one for a "package of toilet paper," known as an "oval roll" or "oval king" package; one for a "toilet paper fixture," and one for an "apparatus for holding toilet paper." The first patent was declared invalid for want of novelty. Of the other two it was said that they were practically the same and were for a "combination of the paper roll described in the former patent, with a mechanism for the delivery of the paper to the user in an economical manner." It was conceded that the mechanism of the patents involved patentable novelty, but it was contended that it being constructed for the purpose of delivering paper to users in convenient length such a roll was not a proper part of the combination, and that, conceding it was a part of the combination, there was no infringement. The first contention, the court said, raised the question whether, when a machine is designed to manufacture, distribute or serve out to users a certain article, the article so dealt with can be said to be a part of the combination of which the machine itself is another part. In commenting on the question the court expressed the view that if the contention could be sustained "it would seem to follow that the log which is sawn in the mill, the wheat which is ground by rollers, the pin which is

produced by the mill, delivered by the mill, the combination, the roll upon the point of the chain, the defendants in the case, except as the machine, with fixtures, been obtained combination; the plaintiff, was to be used the question of the roll with the element of such should be used answer was in cases to the effect with intention to but decided that by the alleged invention, nature, which it renewed periodical is not a precedent factors there stated paper roll to the that it was,) that which grind it, in words, in no more the invalidity of it was made a determination and a periodical device was put to the case at bar have unhesitating the joint action of comitant to the suit. Indeed, as we have by its laterally un advance upon the

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produced by the patented machine, the paper which is folded and delivered by the printing press," might be claimed as an element of a combination. The court, however, refrained from expressing an opinion upon the point, because it conceived that the facts of the case failed to sustain the charge of infringement. And this on the ground that the defendants in the suit had neither made, sold nor used the patented mechanism, except as they purchased it from the patentee, and the only acts proven against them were that they sold rolls of paper of their own manufacture with fixtures manufactured and sold by the plaintiff, the fixtures having been obtained by defendants from the original purchasers of the patented combination; and also of selling oval rolls of paper of their own manufacture to persons who had previously purchased fixtures and paper from the plaintiff, with the knowledge and information that the paper so sold was to be used in connection with plaintiff's fixtures. The court stated the question to be whether, considering the combination of the oval roll with the fixture to be a valid combination, the sale of one element of *such* (italic ours) a combination with the intention that it should be used with the other elements was an infringement. The answer was in the negative. The court, however, stated, that there were cases to the effect that the sale of one element of a combination with intention that it should be used with another was an infringement, but decided that they had no application to one where the element made by the alleged infringer was "an article of manufacture, perishable in its nature, which it is the object of the mechanism to deliver, and must be renewed periodically whenever the device is put to use." The case, therefore, is not a precedent for the decision of that at bar. Not one of the determining factors there stated exist in the case at bar. If the operative relation of the paper roll to the mechanism was as illustrated, (and the court left no doubt that it was,) that is, of the log to the saw in the mill, wheat to the rollers which grind it, pins which are produced by a patent machine; in other words, in no more operative relation than a machine and its product are, the invalidity of the combination was hardly questionable. And, besides, it was made a determining circumstance that the paper perished by its use, and a periodical renewal was indicated to be a renewal "whenever the device was put to use." The case has no principle or reasoning applicable to the case at bar. The combination in the case at bar is valid, as we have unhesitatingly declared. The function it performs is the result of the joint action of the disc and the stylus. The disc is not a mere concomitant to the stylus; it co-acts with the stylus to produce the result. Indeed, as we have seen, it is the distinction of the invention, constituting, by its laterally undulating line of even depth and the effect thereof, the advance upon the prior art. To confound its active co-operation with the

Can petitioner find justification under the right of repair and replacement as described in *Wilson v. Simpson et al.*, 9 How. 109, and *Chappel v. Breslan Billing Co.*, 22 How. 217? The Court of Appeals, in passing on these cases, considered that there was no essential difference between the meaning of the words "repair and replacement." That they both meant restoration of wornout parts. This distinction was recognized in *Wilson v. Simpson*, *supra*, where it is said that the language of the court in *Wilson's and Roussan's case*, 4 How. 709, did not permit the assignee of a patent to make other machines or reconstruct them in gross upon the frame of machines which the assignee had in use, "but it does comprehend and permit the resupply of the effective ultimate tool of the invention, which is liable to be often worn out or to become inoperative for its intended effect, which the inventor contemplated would have to be frequently replaced anew, during the time that the machine as a whole might last." But there is no pretense in the case at bar of mending broken or wornout records, or of repairing or replacing "the operative ultimate tool of the invention" which has deteriorated by use. The sales of petitioner, as found by the courts below, and as established by the evidence, were not to furnish new records identical with those originally offered by the Victor Company, but, to use the language of Judge Lacombe in the Circuit Court, "more frequently in order to increase the repertory of tunes than as substituted for wornout records."

It is further contended by petitioner that the disc records, being unpatented articles of commerce which could be used upon the mechanical feed device machine or exported to foreign countries, or concededly for repair of machines sold by respondent, petitioner could legally sell the same. A detailed comment on this contention or of the cases cited to support it we

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need not make. The facts of the case exclude petitioner from the situation which is the foundation of the contention. The injunction did not forbid the use of the records, except in violation of claims 5 and 35 of respondent's patent. The judgment for contempt was based upon the facts which we have detailed and they show a sale of the records for use in the Victor machine, "an entirely voluntary and intentional" (to use the language of Judge Lacombe) contributory infringement.

We have seen that the Circuit Court of Appeals assumed, for the purposes of this cause, that the feed-device machine was not an infringement of the machine of the patent. We may assume the same, and we are relieved from reviewing the very long and complex affidavits submitted by the petitioner to explain the same, petitioner's relation to it or its position in the art of sound reproduction. Petitioner was found guilty of selling records which constituted an element in the combination of the patent in suit, and for that petitioner was punished. Upon whatever questions or contentions may arise from the use of the feed-device machine we reserve opinion.

We have not reviewed or commented upon the other cases cited respectively by petitioner and respondents in support of their contentions, deeming those we have considered and the principles we have announced sufficient for our decision.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

5-94

IN THE CIRCUIT COURT OF THE UNITED STATES
For the Eastern District of New York.

VICTOR TALKING MACHINE COMPANY

vs.

In Equity.

WINANT V. P. BRADLEY.

Unfair Competition in
Copying Sound-Records.

NOTICE OF SETTLEMENT OF DECREE.

To-WALDO G. MORSE, ESQ.,
Solicitor and Of Counsel for Defendant,
10 Wall Street, New York City.

Please take notice that on Friday, September 17,
1909, at ten o'clock in the forenoon or as soon thereafter
as counsel can be heard, we shall present and submit to his
Honor, Judge Chatfield for signature, the annexed form of
Interlocutory Decree, a copy of which and of this notice is
herewith delivered to you.

Respectfully,

Grace Pettit

Of Counsel for Complainant.

Commonwealth of Pennsylvania) ss:
County of Philadelphia.)

Robert H. Crawford being duly sworn, deposes and says that he resides in Philadelphia, Pennsylvania, and that prior to September 14, 1909, he was of lawful age, and that on the said 14th day of September 1909, he served a copy of the annexed Interlocutory Decree and Notice of Settlement thereof upon Waldo G. Morse, Esq., Solicitor and of Counsel for Defendant, in the above entitled suit, by depositing a copy of said Interlocutory Decree and Notice of Settlement thereof enclosed within a sealed envelope, and addressed to Waldo G. Morse, Esq., 10 Wall Street, New York, N.Y., in the registered mail of the United States at the Post Office at Philadelphia, and received therefor United States Post Office Registry Receipt for Letter No. 80659.

Robert H. Crawford

Sworn to and subscribed before me this 15 day of September A.D., 1909.

Alexander Park

NOTARY PUBLIC
Commission Expires Feb. 6, 1911
726 WILKESPOON ST. BO.
PHILADELPHIA

At a Stated Term of the Circuit Court of the United States for the Eastern District of New York, held in the Court Rooms thereof in the Post Office Building, Borough of Brooklyn, City of New York, this ~~September~~ 12th day of ~~September~~, 1909.

PRESENT:

HON. THOMAS I. CHATFIELD,

U. S. District Judge holding the Court.

VICTOR TALKING MACHINE COMPANY

VS.

In Equity.

WINANT V. P. BRADLEY.

Unfair Competition in
Copying Sound-Records.

INTERLOCUTORY DECREE.

This cause coming on to be heard upon Bill of Complaint, Answer, Replication, proofs (in the form of affidavits and exhibits made by stipulation the record and testimony for final hearing); and Horace Pettit, Esq., for the complainant, and Waldo G. Morse, Esq., for the defendant, having been heard both orally and by written briefs; and the Court being fully advised in the premises, it is this day

ADJUDGED, ORDERED and DECREED as follows:

1. The Complainant, Victor Talking Machine Company, is a corporation as alleged in the Bill of Complaint, and is entitled to maintain this suit; and the defendant Winant V. P. Bradley is subject to the jurisdiction of the Court.

2. The complainant has built up and is maintaining in this country a legitimate and valuable business and goodwill in the manufacture and sale of sound-records containing musical selections specially executed for complainant; and said business constitutes a valuable property-right entitled to protection by a Court of Equity.

3. The defendant Winant V. P. Bradley has caused copies or duplicates or counterfeits of complainant's said specially-executed sound records to be made, the same having been designated "Continental Records", and has sold said Continental Records to the public as duplicates of the originals; and has thereby unfairly availed himself of complainant's property, and has to that extent diverted to himself the legitimate business which should and otherwise would go to complainant, to the injury of complainant's said business and good will.

IT IS FURTHER ADJUDGED, ORDERED and DECREED, that the said defendant Winant V. P. Bradley, his associates, attorneys, privies, agents, clerks, servants, and workmen, and each of them, be perpetually enjoined from either directly or indirectly copying or duplicating or counterfeiting for commercial purposes any sound-record made, or put out, by the complainant, and from either directly or indirectly selling or offering to sell such copies or duplicates or counterfeits, - and from in any manner either directly or indirectly, by making, dealing in or handling said copies, duplicates or counterfeits, attempting to divert to themselves, or otherwise unlawfully injuring, the business and good-will built up and now maintained by the complainant as aforesaid.

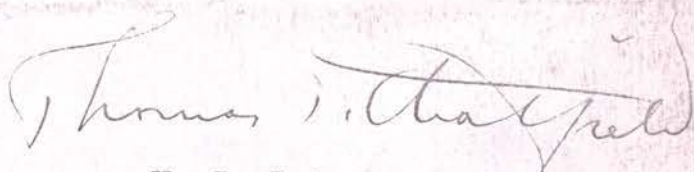
IT IS FURTHER ADJUDGED, ORDERED and DECREED, that the said defendant Winant V. P. Bradley, his associates, attorneys, privies, agents, clerks, servants, and workmen, and each of them deliver up to the custody of this Court, for destruction, or such other disposition as this Court may hereafter order, any and all of the aforesaid unlawful sound-records (whether designated as "Continental" or otherwise), and any and all matrices and other appliances for making the same, that

may be in the possession or under the control of them or any of them, - and likewise any and all advertising matter, catalogues, or the like, relating to said counterfeit sound-records.

IT IS FURTHER ADJUDGED, ORDERED and DECREED that for the convenience of the parties this cause be referred to B. Lincoln Benedict, one of the Masters of this Court for an accounting between complainant and the said defendant Winant V. P. Bradley, with instructions to said Master to report to this Court with all convenient speed the extent of defendant's unlawful acts aforesaid, the amount of profits received, and likewise the amount of complainant's damages in the premises; and to this end the Master is empowered and instructed to cause the defendant Winant V. P. Bradley to appear personally before him, to examine witnesses ore tenus and otherwise, to compel the production of books and papers, and is clothed with the usual powers of Masters in accountings in equity.

IT IS FURTHER ADJUDGED, ORDERED and DECREED that this Court retain jurisdiction of this cause to enable complainant to bring in as party or parties defendant the manufacturer or manufacturers of the said unlawful "Continental Records" when discovered.

IT IS FURTHER ADJUDGED, ORDERED and DECREED that defendant pay to complainant the amount of profits and damages reported by the Master; and that complainants have execution for the same and for their taxable costs and disbursements herein.



U. S. Judge.

UNITED STATES OF AMERICA :
: SS:
EASTERN DISTRICT OF NEW YORK :

THE PRESIDENT OF THE UNITED STATES

to WINANT V. P. BRADLEY,

G R E E T I N G :

WHEREAS, the Victor Talking Machine Company, a corporation organized and existing under the laws of the State of New Jersey, lately exhibited its bill of complaint in the Circuit Court of the United States, for the Eastern District of New York, in the Second Circuit, against you, Winant V. P. Bradley, defendant, praying to be relieved touching the matters therein complained of, among other things that you be restrained from further copying or duplicating or counterfeiting for commercial purposes any sound record made or put out by the complainant, or otherwise unlawfully injuring the business and good-will of the complainant in the premises in said bill mentioned, in any way or manner contrary to law or equity; We therefore, in consideration thereof and also of the particular matters in said bill set forth, do strictly command and enjoin you, the said Winant V. P. Bradley, your associates, attorneys, privies, agents, clerks, servants and workmen, and each and everyone of you, perpetually from either directly or indirectly copying or duplicating or counterfeiting for commercial purposes any sound-record made, or put out, by the complainant, and from either directly or indirectly selling or offering to sell such copies or duplicates or counterfeits,- and from in any manner either directly or indirectly, by making, dealing in or handling said copies, duplicates or counterfeits, attempting to di-

vert to yourselves, or otherwise unlawfully injuring the business and good-will built up and now maintained by the complainant as aforesaid; and we further strictly command and order you, the said Winant V. P. Bradley, your associates, attorneys, privies, agents, clerks, servants and workmen, and each and everyone of you, to forthwith deliver up to the custody of this Court, for destruction, or such other disposition as this Court may hereafter order, any and all of the aforesaid unlawful sound-records (whether designated as "Continental" or otherwise), and any and all matrices and other appliances for making the same, that may be in the possession or under the control of you, or any of you, - and likewise any and all advertising matter, catalogues, or the like, relating to said counterfeit sound-records.



WITNESS, the Honorable Melville W. Fuller,
Chief Justice ~~of the Supreme Court~~ of the
United States, at the Borough of Brooklyn,
City of New York, this 15th day of October,
1909, and in the One hundred and thirty-
fourth year of the Independence of the said
United States.

William Benedict
Clerk

Horace Pettit, Esq.,
Counsel for Complainant.